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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



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WEDNESDAY, MARCH 21, 2007
1:40 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 21, 2007

1:40 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

SUSIE SWATT, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

W. GEORGE VALVERDE, Director
Department of Motor Vehicles

BILL DOHRING
Used Car Dealers

AARON READ
California Association of Highway Patrolmen

JOSE L. PEREZ
Latino Journal

SALLY LEAKE
Sacramento City Unified School District

ART NALDOZA
La Cooperativa

ANTHONY PES CETTI, Former Member
California State Assembly

1 PETER WELSH
California Motor Car Dealers Association

2 ALLEN DAVENPORT
3 SEIU

4 THOMAS B. DUNPHY
5 Lamont Financial Services

6 MIRYAM MORA
7 Donate Life California

8 KATHERINE PFLAUM, President
Filipino-American Employees Association

9 MARTHA LEWIS
10 Latino Hispanic Employees Association

11 KATHY CHARLES, President
12 Black Employees United for Equality

13 THERESE MAESTAS, Vice President
Latino Hispanic Employees Association

14 LOUISE HEREDIA-SAUSEDA
15 CAFÉ

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have one appointee required to appear. Everybody else got lucky.

SENATOR ASHBURN: You're not entertaining action on the other items?

CHAIRMAN PERATA: No.

SENATOR ASHBURN: Those not required to appear. I'm going to ask that three of those be removed from today's session.

CHAIRMAN PERATA: Okay.

Sorry, George, you're not one of them.

[Laughter.]

MR. VALVERDE: Thank you, Senator.

CHAIRMAN PERATA: Mr. George Valverde, who has the awesome responsibility of being the Director of the DMV.

Welcome. You may open within reason with any remarks that you want.

First of all, do you have any family here?

MR. VALVERDE: Yes, I do. I have my brother and my sister-in-law, David and Sylvia Valverde.

CHAIRMAN PERATA: He completely disavows any relationship.

[Laughter.]

MR. VALVERDE: We had this conversation --

CHAIRMAN PERATA: A lot?

This is your lunch hour, David?

DAVID VALVERDE [FROM AUDIENCE]: Extended.

1 CHAIRMAN PERATA: Welcome.

2 George, go ahead.

3 MR. VALVERDE: Thank you, Mr. Chairman and
4 Members. It's truly an honor for me to be here and to have this
5 opportunity to come before you.

6 Certainly when the Governor appointed me to the
7 Director of DMV, it was certainly a pinnacle of my career.

8 As you probably all know, I'm a 30-year career
9 civil servant in California. I spent 15 years at the Department
10 of Finance in progressively important positions. The last 11
11 years I spent working at the State and Consumer Services Agency.
12 I worked with four different cabinet secretaries. During that
13 stint, I had the opportunity to work on a number of fiscal
14 policy program issues, worked on reorganizations, worked -- most
15 recently I worked on the reorganization of the data centers,
16 creating the Department of Technology Services.

17 My recent appointment to the Department of Motor
18 Vehicles, I think, has allowed me to use all my administrative
19 skills that I've acquired over the years, and allowed me to
20 exercise that, you know, judgment in terms of dealing with the
21 scope of responsibilities.

22 Over the last year, we've spent much of that time
23 establishing goals, objectives, and priorities, and establishing
24 performance measurements for the various programs within the
25 department.

26 Clearly I think there's a number of positive
27 things that are going on within the department, and I'm very
28 pleased to report to you that, you know, average wait times for

1 a majority of customers in our field offices are less than 20
2 minutes. You know, our on-line services are increasing
3 significantly from year to year. As I mentioned to you the
4 other night, between 2005 and 2006, our on-line services have
5 increased by over 30 percent. So, I'm pleased in the direction
6 that the department is going.

7 Certainly we have many challenges ahead, and you
8 know, I'm here to discuss those with you today.

9 CHAIRMAN PERATA: Good for you.

10 [Laughter.]

11 CHAIRMAN PERATA: If you look around here, you
12 can see the interests that practice before the DMV. We've got
13 the car dealers here.

14 On that final point, how much have you shifted
15 away from people having to go into a field office and are able
16 to conduct business on-line?

17 MR. VALVERDE: Well, as I mentioned, between 2005
18 and 2006, we increased by about 30 percent. In raw numbers,
19 that's about 2.9 million transactions in 2005, and 3.8 million
20 in 2006.

21 We're focused on increasing the number of
22 services on-line. In fact, in 2006 when we added Change of
23 Address, Notice of Release of Liability, and we included a fee
24 calculator that allows our customers to calculate what is the
25 cost of my vehicle registration, so that they can have that
26 information available when they consider, you know, acquiring a
27 new vehicle.

28 In 2007, our goal is to achieve about 5 million

1 transactions on-line. And we're doing many things to encourage
2 more people to go on-line.

3 CHAIRMAN PERATA: How many licensed drivers are
4 there in California?

5 MR. VALVERDE: We have approximately
6 22-and-a-half million licensed drivers.

7 CHAIRMAN PERATA: Any shot that I can do
8 relicensing on the internet? Take my driver's test on the
9 internet?

10 MR. VALVERDE: Not your driver's test, but
11 certainly --

12 CHAIRMAN PERATA: Don't answer too quickly.
13 Think about it.

14 [Laughter.]

15 MR. VALVERDE: Well, you know, it's not too far
16 fetched.

17 [Laughter.]

18 CHAIRMAN PERATA: You're my kind of guy.

19 [Laughter.]

20 MR. VALVERDE: Thank you.

21 CHAIRMAN PERATA: And you are related to David.
22 One of the persistent issues and questions over
23 the time that I've been chairing this committee is, what's
24 happening with our workforce. I think generally we know we have
25 an aging workforce. Many times people go to work for the state,
26 and then they're lured to another civil service job because it
27 pays better.

28 What are the immediate challenges you're facing

1 now with your workforce?

2 MR. VALVERDE: Well, Senator, one of the things
3 that I embarked on when I came to the department was to do a
4 workforce analysis, to look at what our staffing levels were,
5 what the various age groups at the various levels in the
6 department was, you know. And it's pretty startling, if you
7 think about it.

8 About 70 percent of our senior managers are 55 or
9 older. That means probably within the next five years, we're
10 going to see a significant number of those people leaving DMV,
11 going into retirement.

12 If you go to the next level down below that, the
13 mid-level managers, we're at about 50 percent of those are in
14 the 55 and older age group. And our average workforce, you
15 know, that's at the 45 age, is about, you know, about 40
16 percent.

17 We are now emphasizing a significant amount of
18 our efforts in succession planning, and we're investing
19 resources in doing training, partnering with, you know,
20 community colleges, partnering with CSUS Sacramento, and we
21 recently launched a leadership academy with the University of
22 California at Davis, where we're incorporating, you know, the
23 highest and best, brightest mid-level managers who will be the
24 leaders in the next five years, and training them in various
25 aspects of the department, and what it takes to be a leader in a
26 department like Motor Vehicles.

27 CHAIRMAN PERATA: By the way, I think that 70
28 percent figure is among the highest that I can recall anybody's

1 said for senior managers of all the bureaucracies. That's a
2 staggering number.

3 MR. VALVERDE: Yes, it is.

4 CHAIRMAN PERATA: Talk a little bit about the
5 technology, the data center, data operation.

6 DMV over the years has been notorious, not since
7 you've been there, but right before you got there.

8 What have we learned? How are you applying what
9 we've learned?

10 And then this will inevitably roll us immediately
11 into REAL ID.

12 MR. VALVERDE: Absolutely.

13 Well, you know, since the failure of IT system in
14 the early '90s, I think there was lessons learned that applied
15 statewide, not just to DMV.

16 We incorporated better management of projects,
17 better oversight of projects, a better understanding of how to
18 scope projects. So, all of those things, I think, have helped
19 not only the Department of Motor Vehicles but the state in
20 general in being better managers of how we address IT projects.

21 Certainly in my former capacity, I had the
22 opportunity to see -- oversee a number of IT projects. I think
23 that put me in a very favorable position, coming into DMV and
24 looking at the scope of areas where we've had to deal with
25 changes in technology and try to incorporate that within our
26 business.

27 Today, we're dealing with an archaic IT system, a
28 legacy system that hasn't been replaced in 40 years. We're

1 embarking on a 7-year project to upgrade that system.

2 Certainly my biggest challenge, you know, it's a
3 two-fold problem here in terms, you know, of upgrading the
4 existing system, but also dealing with the fact that the people
5 that know that system the best are the ones that, you know,
6 we're going to be faced with losing here in the next five years.

7 So, we have these dual issues coming -- coming to
8 us that we need to, you know, structure these in a way that so
9 that we transition our systems in an incremental way, in a smart
10 way, so that we take advantage of, you know, our existing
11 workforce that understand our archaic systems, but migrate that
12 to a new web-based approach that our younger generation is
13 prepared to deal with. And so, we're working through that
14 process, and we have a schedule we think that's going to be, you
15 know, successful in getting us there.

16 In addition, what we've done is, we've
17 incorporated the oversight. You know, I meet weekly with our
18 project managers on all of our IT projects just to get a -- you
19 know, I get a five-minute briefing on each one of our projects:
20 where are we today, how do we compare to where we were a week
21 ago.

22 And believe me, you know, we monitor these things
23 very carefully because the last thing I want to do is not be
24 successful in transitioning our exiting IT systems to an
25 upgraded system.

26 CHAIRMAN PERATA: Let's turn our attention to the
27 elephant, and that's REAL ID.

28 For openers, give us a status report. Where are

1 we right now?

2 MR. VALVERDE: If I the might go back over the
3 last 12 to 18 months, the department has been very active in
4 terms of being at the forefront and dealing with Department of
5 Homeland Security, and, you know, working with our Congressional
6 delegation, in communicating both with our Congressional
7 delegation and with Homeland Security relative to issues that we
8 observed with the REAL ID Act.

9 As you know, the Act requires compliance by May
10 2008, with a five-year implementation timeframe. For California
11 what that means is that over that five years, we would bring --
12 we'd have to bring in about two-and-a-half million people into
13 our offices. This is two-and-a-half million more people than
14 currently come into our offices. Today, we see about two
15 million people that come into our offices on an annual basis.
16 So, if you think about that, that more than doubles the number
17 of people that we would see in our offices on an annual basis.

18 The regulations were -- draft regulations were
19 just published two weeks ago. The department is currently going
20 through the process of analyzing those draft regulations. We're
21 preparing our comments. We have 60 days from the publication of
22 those regulations to submit our comments back to the Department
23 of Homeland Security. We expect that we will be meeting that
24 early May date and making those comments to Department of
25 Homeland Security.

26 In addition to that, I know that, you know, the
27 American Association of Motor Vehicle Administrators are going
28 to be having regional hearings on this issue. In fact, there's

1 one in Los Angeles on Friday which we will be represented and
2 we'll be testifying, you know, before that hearing. As well as
3 Department of Homeland Security, I understand that sometime in
4 the next month will be conducting some hearings throughout the
5 country.

6 So today, we're focused on getting our response
7 to the draft regulations to the Department of Homeland Security
8 by May 8th.

9 CHAIRMAN PERATA: Have you had any opportunity to
10 formulate an opinion about what you've seen so far?

11 MR. VALVERDE: Well, we certainly are focused in
12 -- our message has been pretty clear in four areas, you know:
13 the lack of funding; again, the concerns about the timeframe for
14 implementation. While Homeland Security draft regs propose some
15 extension for May 2008 initiation date, they don't provide any
16 extension beyond the May 2013 date. So that clearly -- those
17 two things are clear concerns for us.

18 Identity protection, California probably has the
19 highest standards relative to securing personal information. We
20 want to make sure that our level of identity protection is
21 sustained and incorporated as part of the REAL ID Act. We don't
22 want to be sharing any information that we have with another --
23 any other jurisdiction that doesn't have a comparable level of
24 identity protection standard. And certainly the various --

25 CHAIRMAN PERATA: U.S. Department of Justice,
26 they're fine?

27 MR. VALVERDE: Yes.

28 CHAIRMAN PERATA: Go ahead. That was an

1 editorial comment.

2 MR. VALVERDE: Finally, the requirements for
3 these various verification systems -- birth certificate,
4 passport, and driver's license verification systems -- they
5 currently don't exist.

6 We believe that there should be some development
7 and completion of those verification systems before we begin
8 implementation of this.

9 We certainly will share our comments with
10 Department of Homeland Security within the context of those
11 concerns.

12 CHAIRMAN PERATA: It seems to me that you're
13 highly skeptical that we could conform to the 2013 date. Is
14 that a fair inference?

15 MR. VALVERDE: Well, it would be a challenge. It
16 definitely would be a challenge. We would have to look at --
17 and we are looking at different scenarios, Senator. We're
18 looking at, okay, if we were -- if we were obligated to do this,
19 and you know, the will of the Legislature and will of the
20 Governor were to accommodate that date, the department would
21 find a way to do it.

22 However, given our current infrastructure, our
23 current capabilities, it certainly would be a challenge within
24 our existing workforce.

25 CHAIRMAN PERATA: You just hit upon a very, very
26 important distinction.

27 Our ability to make an effective argument with
28 the federal government, who basically have given us a huge

1 unfunded mandate, our ability to argue effectively is really
2 dependent upon an honest assessment.

3 I'm not going to confuse your role with that of a
4 policy maker, but we do depend upon you for an honest
5 appraisal. And while I appreciate the "We'll do what we need to
6 do, sir," argument, right now it's far more important that as
7 you move along this process, and you see what you're faced with,
8 that we have a candid assessment.

9 If we can't do this, I want to know we can't do
10 it, because while you will not want to tell people you work for
11 the DMV, every politician in this building is going to be held
12 accountable, even though the feds were the ones to screw it up.

13 So, it's going to be very, very important. And
14 you strike me as a very forthright individual.

15 I'm just telling you, at least when you're
16 talking to me, privately or publicly, candor, big thing for me.

17 MR. VALVERDE: Absolutely.

18 Let me clarify one thing for you, though.

19 CHAIRMAN PERATA: You don't have to be candid
20 yet. Down the road.

21 [Laughter.]

22 MR. VALVERDE: I just want to be clear that while
23 we -- you know, the Homeland Security has established a five-
24 year timeframe, we have -- we have been clear that we think
25 California would require at least ten years. And that has been
26 in our correspondence.

27 CHAIRMAN PERATA: What's the closest state to us
28 in terms of the number of registered or licensed people?

1 MR. VALVERDE: Probably New York or Florida;
2 Texas would fall in that range, too.

3 CHAIRMAN PERATA: If you would focus for a second
4 on, I'm an individual. I have to comply with the law. What am
5 I faced with? What do I have to do?

6 MR. VALVERDE: Well, if you were coming -- first
7 of all, if your birth date were May 2008, then you would be
8 obligated to come into a DMV field office. You would have to
9 have your birth certificate and two proofs of residence with you
10 when you came into the office.

11 We would somehow validate that that is a true
12 birth certificate.

13 CHAIRMAN PERATA: We don't know how to do that
14 yet?

15 MR. VALVERDE: We don't know how to do that yet.
16 And I'm talking about May 2008.

17 With respect to the residency, we would assume,
18 again, if they reflect some reasonable, you know,
19 characterization of your current residence, we would accept that
20 as a proof of residence.

21 CHAIRMAN PERATA: I'm assuming that the ability
22 to communicate this need to 22-and-a-half million licensed
23 drivers, you'll have to think of an entire PR program, or public
24 awareness program?

25 MR. VALVERDE: Absolutely.

26 CHAIRMAN PERATA: And we don't get any financial
27 help from the good fairy; that's on us?

28 MR. VALVERDE: That's correct, Senator. And I'm

1 glad you asked that question because --

2 CHAIRMAN PERATA: My pleasure.

3 [Laughter.]

4 MR. VALVERDE: Thank you.

5 One of the things we have done, and this is in
6 terms of, you know, ensuring that we let people know about our
7 on-line services is, we have entered into a marketing campaign.
8 And we've hired a public relations consultant to assist us in
9 marketing DMV, establishing that brand of driving change in
10 DMV.ca.gov.

11 Our expectation is that, you know, once we
12 establish that brand, once we clearly identify DMV and what our
13 role and responsibility is with the public, we will transition
14 into a marketing campaign relative -- what is, you know, the
15 public's responsibility when their driver's license expires.

16 So, we're anticipating that we're going to use
17 this vehicle in order to educate the public and let them know
18 about their obligation. And we're doing this through various
19 venues, through billboards, radio spots, in various community
20 newspapers. We have Ask the Director column, which we will
21 expand on as time goes. And we're getting very good response to
22 these various mechanisms that we're using to communicate with,
23 you know, our public.

24 CHAIRMAN PERATA: Knowing what you know now, what
25 do you think the cost is to do this, either the unit cost or the
26 gross cost?

27 MR. VALVERDE: REAL ID?

28 CHAIRMAN PERATA: Yes.

1 MR. VALVERDE: Well, without having the final
2 regulations in hand, and there's still many things that could
3 happen between now and when that happens, you know, our estimate
4 still continues to be roughly 500 million.

5 CHAIRMAN PERATA: Say again?

6 MR. VALVERDE: Five hundred million to about 750
7 million. So, and it could go as high as a billion, depending
8 on, you know, some of the other unknowns that we've yet to
9 clarify.

10 CHAIRMAN PERATA: What's your budget right
11 now?

12 MR. VALVERDE: Our budget, it's about \$850
13 million.

14 And I should clarify. That cost is over the term
15 of the -- how long it would take us. That's not 500 million a
16 year. So, if we did it in five years, it would be 100 million a
17 year.

18 CHAIRMAN PERATA: Okay. I think I'll rest on
19 that.

20 Gilbert.

21 SENATOR CEDILLO: I could probably think of a
22 question or two.

23 Although, I do feel there was that movie, The
24 Godfather, that scene where the brother shows up from Italy and
25 just sits there.

26 [Laughter.]

27 SENATOR CEDILLO: And I'm wondering if I'll ever
28 get another bill to move past the desk.

1 Let's start with a couple things. The original
2 mission of DMV was the ensuring safe highways through licensing
3 and testing of all motorists and vehicles?

4 MR. VALVERDE: Yes.

5 SENATOR CEDILLO: If you recall, that was our
6 original mission for many, many years.

7 Any feelings on that? Your opinion in terms of,
8 is that still an overarching mission for the department?

9 MR. VALVERDE: Senator, you know, one of the
10 things I did when I came to the department, I thought it was
11 important that we establish -- again, I want to go back to our
12 goals and objectives.

13 I clearly -- I think we clearly define three
14 goals. One was customer service. The other is driver safety.
15 The third is identity protection. And I view driver safety --
16 well, I view all of these on an equal plain in terms of what the
17 department's role and responsibility are.

18 I think, you know, we want to make sure that
19 people on the road know what their role, their responsibility,
20 have been tested, and have clearly a knowledge of what it takes
21 to be a driver on our highways and our streets in California.

22 SENATOR CEDILLO: So, how do we accomplish this?
23 What's our strategy? What's our implementation to make sure we
24 we have highway safety?

25 MR. VALVERDE: Well, we do it in a number of
26 ways. We do it through driver education. We do it through our
27 testing, our -- whether it be our written test or driving test.
28 We do it through our Driver Safety Program, where people get

1 referred, for anyone that may be considered an unsafe driver.
2 So, there's various ways that we do it.

3 More recently, one of the things that I did was,
4 I established an ombuds program for at-risk drivers. And this
5 was intended to be a mechanism for, whether it be community
6 groups, or individuals, or health professionals, to access DMV.
7 So that if there was some concern about a specific driver, that
8 we would have someone that they could talk to and say, what are
9 my options; how do I deal with this issue?

10 So, we have initiated it. It's in its infancy.
11 I think today I have four people that are, you know, in
12 different jurisdictions of the state that have been, you know,
13 working on this and establishing their community contacts, so
14 that we're not just in an office, waiting for somebody to come
15 to us. We want to deal with community at large and let them
16 know that, you know, we care about having a safe driving
17 community.

18 SENATOR CEDILLO: So, your thoughts on this,
19 given that this is a strategy to make our highways safer, that
20 to the fullest extent the implementation of this strategy, this
21 would apply to all motorists?

22 MR. VALVERDE: It applies to all motorists to the
23 degree that we can affect that, yes, sure.

24 SENATOR CEDILLO: In other words, all motorists
25 benefit from knowing the rules and regulations of the highway?

26 MR. VALVERDE: Absolutely.

27 SENATOR CEDILLO: And testing that to demonstrate
28 their knowledge.

1 MR. VALVERDE: Absolutely.

2 SENATOR CEDILLO: Then ultimately, once they've
3 reached the threshold, then the state licenses those motorists
4 to verify or validate that baseline template of knowledge?

5 MR. VALVERDE: Correct.

6 SENATOR CEDILLO: Let's talk a little bit about
7 REAL ID and the California version of that, SB 60.

8 I recognize the lack of full coherence between
9 the Legislature and the Governor's Office in us seeing this
10 exactly the same at the moment, so I want to take the politics
11 out of it and just deal with the policy.

12 I want you to assume we've passed SB 60, the
13 Governor has signed the legislation.

14 Tell me about what plans or capacity you feel the
15 department would have to implement that?

16 MR. VALVERDE: Well, I think clearly my role is
17 to address or administer the requirements the law. And I
18 certainly will do that, you know, to the best of my ability.
19 You know, it's not my intention in any way to violate what the
20 current law requirement is.

21 SENATOR CEDILLO: So, we're assuming, as I say,
22 assuming for argument that SB 60 passes. It includes, and I'm
23 taking hearing you, it includes the capacity for two-and-a-half
24 million motorists to receive a second tiered license, a license
25 that's distinguished in either color or design.

26 Tell me about your capacity, what impact that has
27 on your department to implement REAL ID.

28 MR. VALVERDE: Well, I feel like I need to

1 clarify at least our interpretation of a second tier license.
2 There may be a difference of opinion here relative to how the
3 department has interpreted the intent of a second tier license,
4 and how you might interpret it.

5 But the way we've we interpreted a second tier
6 license would be tantamount to what our current law requirement
7 is. In other words, we do certain verifications of eligibility
8 for drivers. And assuming they meet those requirements, then we
9 put -- we go through the myriad of tests.

10 The assumption that we've made, at least to date,
11 and certainly that's subject to some clarification, you know,
12 our reading of the regulations has led us to believe that
13 they're providing some discretion to states relative to what
14 constitutes a -- you know, this REAL ID compliant identification
15 and this other noncompliant document or identification.

16 To date, we've assumed that that would still be
17 within the context of our existing 22-and-a-half million
18 licensed drivers.

19 SENATOR CEDILLO: I'll ask you again. Assume we
20 pass SB 60 and the Governor signs it. So, we have a bill that,
21 in its definition of the California REAL ID Act, includes
22 two-and-a-half million undocumented persons.

23 I'm not clear if what you just said includes that
24 community of people, and I want you to assume that they are
25 included in the signature by the Governor and the passage of the
26 legislation.

27 I'm interested in your capacity to implement and
28 effectuate REAL ID.

1 MR. VALVERDE: Well, that is a policy call. And
2 you know, certainly within the context of that policy decision,
3 we would formulate a plan to do that.

4 If you're asking me if I could -- what my plan
5 would be?

6 SENATOR CEDILLO: Right. There's a 10 percent
7 differential. We've got 22-and-a-half million motorists.
8 There's two-and-a-half million motorists who are not licensed,
9 tested and insured. That puts us to 25.

10 Do your plans require a 10 percent incremental
11 increase? How do you envision this?

12 MR. VALVERDE: Well, I think in the response to
13 one of the questions, we tried to address that. And I think,
14 you know, this is an issue that creates a significant burden,
15 because it's not just a matter of issuing a driving -- a
16 driver's license.

17 It's a matter of going through the written test,
18 the driver's test, you know, taking a picture ID, three
19 activities that, you know, today we have about 800,000 a year
20 that go through that process.

21 So, if you're asking me from a workload
22 standpoint, adding two-and-a-half million to that would require
23 a significant amount of additional staff. I think we've
24 estimated that we would need upwards of, you know, 600 staff.
25 We would also require additional facilities. Our costs would
26 range from upwards of 150-200 million to accommodate that.

27 SENATOR CEDILLO: Is this additional --

28 MR. VALVERDE: This is in addition to the costs

1 that I previously stated of what it would take us to be REAL ID
2 compliant.

3 SENATOR CEDILLO: So, REAL ID compliant costs 500
4 million?

5 MR. VALVERDE: Right.

6 SENATOR CEDILLO: And this is an additional 10
7 percent of the motoring public, but are engaged in probably --
8 I don't know what that is. If you've got 800,000 people coming
9 in, and this two-and-a-half million, three times more may have
10 to come in. So, it could be 10 percent more in terms of costs,
11 or it could be 30 percent more in terms of costs?

12 MR. VALVERDE: I think our estimate is somewhere
13 in the 150-200 million because we would have to add, you know,
14 additional offices. We wouldn't have the capacity within our
15 existing offices.

16 Right now, we're equipped to handle about the
17 800,000 per year. To introduce an additional 2.5 million into
18 that, we would have to expand our existing infrastructure to
19 accommodate that.

20 So, it does represent a workload that is
21 currently not accounted for.

22 SENATOR CEDILLO: I want to work with you on
23 those numbers, but I want to come back to that.

24 Why don't you give me the criteria in REAL ID for
25 the second tiered license? What does an applicant need for that
26 second tiered license?

27 MR. VALVERDE: Well, I think the assumptions
28 we've made about that are that individuals that currently are

1 driver's license holders, and the assumption would be that you
2 choose not to get a REAL ID compliant identification. That this
3 would be an option then to continue getting a noncompliant
4 identification, which would apply only for driving purposes.

5 In other words, that document would not be --
6 would not be recognized to board a commercial airline, to enter
7 a federal building, or a nuclear facility.

8 And there may be, again, as you know, Senator,
9 there are conditions when people may choose not to do that, may
10 choose to say, "I don't want to go through the process of
11 getting my birth certificate. I don't need that extra authority
12 or extra premier card."

13 SENATOR CEDILLO: Right. So, in terms of your
14 planning, how many Californians do you anticipate will not want
15 to do that, whether on the basis of convenience, by basis of
16 necessity that they don't need to board an airplane, they don't
17 travel like us frequently, by the fact that they're part of the
18 25 percent of Americans that have passports?

19 What percent of Californians do you anticipate
20 will not want to go through that review?

21 MR. VALVERDE: Well, at this point I don't have
22 an estimate of how many people may choose to do that. And
23 whether or not that policy decision is made is still
24 outstanding. It is an option that California may want to
25 consider as we go down this path.

26 You know, we're still in the process of analyzing
27 what proportion of the population might choose that path. I
28 mean, there are certain things you might take into consideration

1 that might apply. For example, passports, people with passports
2 may choose not to get a REAL ID compliant card.

3 But I think that's something that we would have
4 to spend sometime to try to --

5 SENATOR CEDILLO: What would you recommend to the
6 Governor on that policy?

7 MR. VALVERDE: Well, I think -- and I don't want
8 to put you off on this, but I think before we make a formal
9 recommendation, we have to get the final regulations. We're
10 still in the in review process. I'm in the process of making
11 recommendations to Department of Homeland Security on things
12 that we think need to be changed.

13 I think we need leave all of our options on the
14 table until the final regulations have been adopted, and then
15 start stipulating, well, if we -- you know, what our options
16 are, and then this is the path that I would recommend.

17 So, I don't know that I'm prepared today to tell
18 you that I would recommend one path over another because there
19 may be -- I'm still hopeful that there will be considerable
20 changes. And I think before we make that, you know, some
21 assumption on doing something like that, we need to consider the
22 final -- final regulations.

23 SENATOR CEDILLO: Let's assume that the Governor
24 decided California needed the option of the second tiered
25 license, the driving-only license. What would an applicant have
26 to do to get that license?

27 MR. VALVERDE: Well, if we follow our current
28 process, and I'm assuming that would be the process we would

1 propose, you would have the option, and depending on, you know,
2 if this was a renewal, you might have the option of doing it by
3 mail or on-line. Depending on where you are on the cycle, you
4 may be required to come in anyway.

5 So, you know, California law allows for two
6 renewals after your initial license. So, depending on where you
7 are in that process would dictate what your responsibility would
8 be.

9 SENATOR CALIFORNIA: So, if I'm a renewal
10 applicant, right, I'm a Legislator, and I'm really, really busy,
11 so I don't want to go down to DMV, I could renew on-line, and
12 then I'd get back a license that would indicate that it was for
13 driving only; is that correct?

14 MR. VALVERDE: If that policy were adopted, yes,
15 I would expect that would be the case.

16 SENATOR CEDILLO: What would be the process for
17 those who were new applicants, new motorists?

18 MR. VALVERDE: They would absolutely have to come
19 into the office.

20 SENATOR CEDILLO: And they would do what when
21 they came into the office? What would they have to do? What
22 would they have to bring with them? What does REAL ID tell us
23 they would have to bring with them?

24 MR. VALVERDE: Well, if we're talking about a
25 REAL ID compliant card, they would have to bring their birth
26 certificate and two documents --

27 SENATOR CEDILLO: We're on the second tier, on
28 the REAL ID permissive but noncompliant document.

1 MR. VALVERDE: Well, under our current law,
2 typically a new driver is bringing in a birth certificate, some
3 proof of identity, and a Social Security Number, and residence.
4 Those are under current law what we do with new drivers in
5 California.

6 SENATOR CEDILLO: And under REAL ID, you just
7 indicated that the new applicant would have bring a birth
8 certificate, two forms of residency, photo and fingerprints.

9 MR. VALVERDE: And let me clarify that.

10 I'm assuming that that individual would have been
11 a licensed driver currently in California, okay.

12 SENATOR CEDILLO: Let's say it's new. I'm 18 or
13 16, and I'm applying. REAL ID is now the law, and I want to get
14 a license.

15 MR. VALVERDE: And I want to get a REAL ID?

16 SENATOR CEDILLO: A REAL ID compliant license,
17 yes, so the full package.

18 MR. VALVERDE: Yes, yes.

19 SENATOR CEDILLO: What do I have to bring? I
20 have to bring a birth certificate, two forms of residency, a
21 photo, fingerprints.

22 MR. VALVERDE: Social Security Number.

23 SENATOR CEDILLO: You indicated that we have had
24 problems verifying, or we don't have a system in place to verify
25 those?

26 MR. VALVERDE: There are certain systems that
27 aren't in place. We do have a Social Security system that we
28 currently validate Social Security Numbers. We do have an

1 existing alien verification system that we use for reside
2 requirements.

3 There isn't an existing birth certificate
4 validation system. There is no existing passport system, so
5 that if someone were to use their passport as a proof of
6 residence or a proof of identification, we wouldn't have a way
7 to validate that. And there isn't an existing driver's license
8 system which would allow us to validate if you hold a license in
9 another state.

10 SENATOR CEDILLO: Would those documents deemed or
11 considered to be the acceptable documents for applying for one
12 of these licenses?

13 MR. VALVERDE: I apologize. I'm not clear.

14 SENATOR CEDILLO: You said you can't verify these
15 documents, but are these documents, according to REAL ID, are
16 those acceptable documents to verify?

17 MR. VALVERDE: Well, you see, and again, we're
18 dealing with the draft regulations. And the draft regulations,
19 they're kind of ambiguous on this point. And they sort of lead
20 us to believe that until these systems are in place, somehow the
21 states are going to be obligated to maintain that record.

22 In other words, you bring in your birth
23 certificate. I'm going to have to somehow maintain that
24 record. You probably want you birth certificate back. I'm
25 going to have to either photocopy it or make a hard copy of it
26 and file it in our system.

27 Again, these are areas where there's some
28 concerns on our part relative to what -- what the regulations

1 are requiring the states to do.

2 SENATOR CEDILLO: Let's say I can't or I choose
3 not to bring those documents so that I can get an upper tiered
4 license. Now I want to get the second tier license. What do I
5 have to bring? What's my baseline?

6 MR. VALVERDE: Based on a new driver?

7 SENATOR CEDILLO: Sure.

8 MR. VALVERDE: A new driver would still have to
9 bring the birth certificate. Would still have to have the
10 Social Security Number.

11 SENATOR CEDILLO: The second tiered?

12 MR. VALVERDE: Yes, that's our current driver's
13 license requirements.

14 SENATOR CEDILLO: But remember, we're talking
15 about the requirements for REAL ID, for not the A License but
16 for the B License or the second tier license.

17 So, what's the criteria --

18 MR. VALVERDE: The law -- the draft regulations
19 are not clear on that.

20 What my assumption has been --

21 SENATOR CEDILLO: What are they saying? Tell me
22 what the draft regulations say?

23 MR. VALVERDE: I'm paraphrasing here. To my
24 knowledge, it basically allows the states to establish a second
25 tier license.

26 SENATOR CEDILLO: Right.

27 And that second tiered license, if you're
28 applying for it, what are the documents you need to come in and

1 get that?

2 MR. VALVERDE: Our assumptions have been that the
3 second tier license would be comparable to what we currently
4 require in being in compliance with the California driver's
5 license. So, that would be the birth certificate, the Social
6 Security Number, the proof of residence, the thumb print, the
7 facial imagine.

8 SENATOR CEDILLO: You said birth certificate --

9 MR. VALVERDE: Social Security Number.

10 SENATOR CEDILLO: SS Number, photo --

11 MR. VALVERDE: Photo, thumb print.

12 SENATOR CEDILLO: Thumb or all fingers?

13 MR. VALVERDE: We right now do thumb at the
14 moment.

15 SENATOR CEDILLO: But for the second tiered?

16 MR. VALVERDE: We would probably apply the same
17 standard.

18 SENATOR CEDILLO: What else?

19 MR. VALVERDE: I think that's all.

20 SENATOR CEDILLO: Can you tell me where it says
21 this in the regs? I've read them, and I have to tell you that I
22 don't read anywhere where they indicate that a person has to
23 bring in -- let's go back.

24 You say they have bring a birth certificate. Is
25 this a birth certificate from the United States or from
26 anywhere?

27 For the second tier, not for the first tier, and
28 not for a current California, but for what the feds have

1 indicated that, in instances where people choose or cannot
2 comply with the first tier, what do they need for the second
3 tier?

4 MR. VALVERDE: Our -- again, Senator, I think the
5 assumption I would make is that we would apply the current
6 requirements that we have for issuance of a California driver's
7 license. And that would be -- constitute the requirement for
8 the second tier license.

9 SENATOR CEDILLO: So the birth certificate, does
10 that include, or does not include, a birth certificate from
11 outside of California?

12 MR. VALVERDE: It can include birth certificates
13 from outside California.

14 SENATOR CEDILLO: It could include them from
15 other countries, India, China, Taiwan?

16 MR. VALVERDE: I think it could.

17 SENATOR CEDILLO: So, they would bring you that
18 birth certificate or that proof of birth from their country.

19 Now Social Security, is that included in REAL ID?

20 MR. VALVERDE: That's a current California
21 requirement.

22 SENATOR CEDILLO: So it's not included in REAL ID
23 for second tiered?

24 MR. VALVERDE: The second tier is, as I alluded
25 to, it allows the state to determine whether or not it would
26 propose a second tier.

27 SENATOR CEDILLO: I appreciate that. I
28 appreciate it, in fact I advocate it.

1 But I want to talk about it in terms of how it
2 gets implemented.

3 So in the second tier, it's a birth certificate.
4 I did not read in there that it included a Social Security for
5 the second tier.

6 MR. VALVERDE: And our assumption has been that
7 we would maintain the current law requirements in California to
8 be the threshold for issuing a second tier license.

9 SENATOR CEDILLO: So, this is a threshold that
10 you're assuming the state's going to take, but not a threshold
11 that the federal government requires; is that correct?

12 MR. VALVERDE: We did that because we were
13 establishing a base under which California might look at what
14 the implications would be.

15 SENATOR CEDILLO: So this then exceeds the
16 requirements of the federal government?

17 I appreciate what you're saying, but my question
18 is now, are the feds asking us to do this? I don't see it in
19 the regulations, so then this exceeds what the feds are asking
20 us?

21 This is even before one of my other questions.

22 MR. VALVERDE: It's my understanding, and this is
23 only based on conversations I've had, I don't have any documents
24 that, you know, speak to this, but based on, you know, my
25 conversations with Homeland Security was that the intention was
26 to allow states the discretion to provide for a second tier
27 license. And that the intention would be to deal with existing
28 drivers, and to provide the states the option to continue to

1 license those under the current law.

2 SENATOR CEDILLO: With respect to the feds, my
3 impression is that they asked for all fingerprints, not just a
4 thumb print, both for first tiered and the second tiered.

5 MR. VALVERDE: That's not my understanding. It
6 could be. I'll have to get back to you on that, Senator.

7 I think our -- I know we have a driver's license
8 ID procurement that we're currently in the process of, and I
9 think that is based on a single thumb print.

10 Now, I do know that relative to employees that
11 are involved in the manufacture or associated in that process,
12 and these would be DMV employees or contract employees, there
13 will be required full, you know, ten prints for those.

14 SENATOR CEDILLO: With respect to the second
15 tier, I for the life of me, looking at the regulations, cannot
16 find.

17 On the birth certificate for the first one, you
18 indicate that we are challenged by not being able to verify
19 those, but that we do have a duty to verify those birth
20 certificates. Is that correct?

21 MR. VALVERDE: For the first tier, we've been
22 asked to retain them until the verification systems are
23 available.

24 SENATOR CEDILLO: I cannot find in the 162 pages,
25 or in the previous rules and regs as they relate to REAL ID,
26 anywhere where that is required for the second tier.

27 MR. VALVERDE: And I don't know that it's
28 addressed in the specific regulations.

1 SENATOR CEDILLO: So, it's not addressed in the
2 regulations; therefore not mandated in those regulations; is
3 that correct?

4 MR. VALVERDE: I think it's left to the
5 discretion of the state.

6 SENATOR CEDILLO: Correct. Which means, if it's
7 left to the discretion of the state, which means then if the
8 state chooses not to, they may choose not to. Or, if the state
9 chooses to they may choose to, my understanding of discretion.
10 But it's not mandatory; it's not directed; it's not required by
11 the federal government.

12 Is that correct?

13 MR. VALVERDE: I think the regs only speak to --
14 generally their focus is on the REAL ID compliant card and do
15 not speak specifically to the requirements in the second tier.

16 SENATOR CEDILLO: Right. So therefore, if they
17 had wanted to make that the requirement, they clearly could
18 have.

19 MR. VALVERDE: I mean, I could speculate on
20 that. And I know in certain areas they have chosen to, you
21 know, dictate, you know, requirements on both first tier and
22 second tier. And I don't know specifically that they have
23 dictated, you know, on that aspect of it.

24 I think based on what I read, I don't believe --
25 I believe you're right. They haven't specifically dictated to
26 states how the second tier -- what specific documents.

27 SENATOR CEDILLO: So, it's our discretion to
28 either exceed or not exceed what the feds have asked us to do.

1 We have discretion in this matter; is that correct? I thought I
2 heard you say they've left it to the states. Is that correct?

3 MR. VALVERDE: That's correct.

4 SENATOR CEDILLO: Any thoughts on the financing
5 or funding of this?

6 MR. VALVERDE: Well, we know we have, based on
7 the population we're dealing with, about a \$500-750 million
8 obligation. To date, the federal government has not indicated,
9 you know, what kind of funding might be available.

10 We are -- continue to, you know, indicate our
11 concern about that. We will continue to do that.

12 In fact, the Governor just recently sent a letter
13 to Congressional staff, our Congressional delegation, speaking
14 to the lack of availability of funding for the REAL ID.

15 So, we're going to continue to pursue that.

16 SENATOR CEDILLO: Separate from this broad
17 category, this broad population of immigrants who would not
18 qualify for the Tier One compliant license, there is a large
19 group of immigrants that REAL ID is very specific about that we
20 do not grant licenses to. REAL ID is very specific about a
21 whole series of immigrants who have applied for regularization
22 of their status, or whose applications are pending.

23 We had asked you about that. It's about a
24 million people.

25 Do you have plans for that?

26 MR. VALVERDE: Well, we -- these are pending
27 applications, and based on what we understand today, these are
28 applicants that we currently address through our -- the

1 immigration process. And we believe that would -- that
2 population would not significantly change.

3 SENATOR CEDILLO: It's a million people. In your
4 written answer you say,

5 "However, based on the language
6 in the regulations this should
7 not represent a significant
8 workload."

9 It's one million people, so about 1.2, which is
10 half of the 2.5.

11 MR. VALVERDE: That's the existing workload that
12 we're experiencing.

13 We're assuming the existing process we go
14 through in terms of verifying, you know, pending applications,
15 that this population would not increase beyond what we're
16 currently experiencing today.

17 SENATOR CEDILLO: So can you tell me at this
18 point, you just said about your current caseload, so you provide
19 licenses, or it's your belief that you provide licenses for all
20 these categories that the feds have delineated?

21 MR. VALVERDE: We comply with the -- if they've
22 been authorized pending status, whether it be six -- well, we
23 don't go beyond our existing authorization. But we certainly
24 would do it for the period that they have temporary status, or
25 to the extent that we can within our existing law.

26 And -- but we rely on the existing alien
27 verification system to provide that pending status or the
28 verification of that. That's one of the five systems that's

1 required under REAL ID. California currently has access to that
2 information, and we use it as part of our existing verification
3 process.

4 And based on the way we've read the regulations,
5 our interpretation is that that population would continue to
6 have the same level of access and authorization as we currently
7 provide.

8 SENATOR CEDILLO: At this moment, no more
9 questions.

10 CHAIRMAN PERATA: Senator Ashburn.

11 SENATOR ASHBURN: Thank you, sir.

12 MR. VALVERDE: Thank you.

13 SENATOR ASHBURN: I want to thank you first for
14 your 30 years of service to the people of California. You have
15 been a part of the state's workforce in carrying out services to
16 the public, and risen to increasing positions of
17 responsibility.

18 Do you regret telling the Governor yes to this
19 job?

20 [Laughter.]

21 SENATOR ASHBURN: You don't really have to answer
22 that.

23 You told me that your picture hangs in all the
24 DMV offices. So, the day before yesterday I went out to the
25 office on Broadway to see if your picture was hanging in the
26 office.

27 I filled out an application for a driver's
28 license, and I was assigned a number. I had no appointment, and

1 I just wanted to see what happens.

2 I finally -- I was able to speak with a
3 representative at the counter within 14 minutes. In watching
4 the other transactions taking place, people without
5 appointments, at one of the busiest offices that I can imagine,
6 and an office where there've got to be a variety of languages
7 being spoken, people were being served in a very, very efficient
8 manner, even as some of the not ideal conditions.

9 CHAIRMAN PERATA: Would you conclude that his
10 picture hanging in there had that effect.

11 [Laughter.]

12 SENATOR ASHBURN: Well, there were two points.
13 One, just to verify that you were correct in asserting to me
14 that your picture was there, and it is.

15 But did you know that the Governor's picture
16 hangs slightly higher than yours?

17 [Laughter.]

18 SENATOR ASHBURN: And I had told you previously
19 that when I took my daughter a few weeks ago to another field
20 office for her driver's license, that we had extraordinarily
21 good service. And I wanted to just test it here in Sacramento
22 in a much bigger office.

23 And you did very well.

24 MR. VALVERDE: Thank you.

25 SENATOR ASHBURN: And I think your picture
26 looking out over those employees probably had an impact.

27 MR. VALVERDE: Thank you.

28 SENATOR ASHBURN: You've had a lot of questions

1 about the REAL ID Act, and the federal law, and the
2 implementation, and the regulations, and the cost.

3 I just want to ask you a simple question about
4 that, and that's how view your responsibility to write policy as
5 opposed to implementing that which is presented to you by policy
6 makers.

7 Are you a policy maker in terms of the decisions
8 within the context of the REAL ID Act?

9 MR. VALVERDE: Well, Senator, I view my role as
10 the administrator here. And certainly, you know, my job is to
11 make sure that the Department of Motor Vehicles is complying
12 with current law.

13 The Legislature and the Governor, they make
14 policy. My job is to administer that policy.

15 SENATOR ASHBURN: And I think the questions that
16 have been raised are good questions. There are different
17 interpretations. It appears as though the federal regulations
18 are going to defer to the states on certain questions.

19 It's clear to you, there's no doubt in your mind
20 what your role is in this. That others, the Governor and the
21 Legislature, are to develop a policy, and you're to put it into
22 effect?

23 MR. VALVERDE: Absolutely, Senator.

24 SENATOR ASHBURN: I want to talk about that.
25 Senator Perata asked you about automation and technology.

26 The state doesn't have a very good record in that
27 regard.

28 You talked about a twelve-year upgrade of a

1 40-year-old system. Twelve years, a dozen years, I'm sure
2 you're going to be the director for twelve years, with those
3 every week, five-minute updates.

4 You know, I can't believe that that would be
5 acceptable in the private sector.

6 You tell me. You've been in the state government
7 for 30 years. You've seen it all. What's wrong? Why can't we
8 fix things around here?

9 MR. VALVERDE: Let me clarify something.

10 If I said twelve, I hope I didn't, but it's only
11 seven.

12 SENATOR ASHBURN: Are you going to be there for
13 seven years?

14 MR. VALVERDE: Right.

15 I think part of it is, you know, we don't have --
16 in the private sector you don't hear about failures. You only
17 hear about successes.

18 In the public sector, if we have a failure on a
19 two million dollar system, you hear about it. We're talking
20 about, you know, a multi-million, hundreds of millions of
21 dollars of system.

22 And please be assured that if any phase of that,
23 and we're approaching it in incremental phases in the current
24 budget for '07-'08, we're asking for about 27 million, which is
25 the first installment of what we view as a seven-year
26 investment.

27 But we have to have -- we have a higher threshold
28 that we have to guarantee to the public that we're going to be

1 able to deliver this system within the budget and within the
2 timeframe that we've established.

3 I realize seven years is a long time, but DMV has
4 huge data bases. We're talking about hundreds of millions of
5 records. We don't have the discretion to having any of that
6 fail.

7 Law enforcement relies on us. Various other
8 agencies rely on us. You know, commercial as well as other
9 private interests rely on us. We don't have the luxury of, you
10 know, hoping we're going to be successful. We have to have a 99
11 percent reliability that we will be successful.

12 SENATOR ASHBURN: And you're convinced and
13 satisfied that the course that you're on is the best available
14 to produce a reliable higher standard automation, advance in
15 technology, and that's how long it takes?

16 MR. VALVERDE: I think given, you know, the
17 workforce we're dealing with, and assuming that we can take
18 these on in reasonable chunks, that yes. And I think we have a
19 very reasonable plan.

20 Our approach is, as I said, it's segmented into
21 the various data bases. At each point along the way, we're
22 going to be able to complete a phase and say, we have this data
23 base completed; we have this available. And we're going to be
24 able to put it into production.

25 So, we're not going to be waiting seven years to
26 put it in production. I will provide to you in two years that
27 our driver's license system will be in production. So, that'll
28 be transitioning onto our new platform, and we'll be using that

1 as our -- you know, one part of our data base.

2 But at the end of the day, if you think our
3 driver's license, our occupational licenses, our vehicle
4 registrations, we can't take this on at one time and do it
5 within a shorter timeframe.

6 SENATOR ASHBURN: I just want to ask one other
7 thing, and that is sort of a fairness question.

8 Many of my constituents drive pickup trucks as
9 opposed to passenger vehicles. And as I understand it, every
10 pickup truck in California is considered to be a commercial
11 vehicle for purposes of vehicle registration, whether or not the
12 owner of that vehicle uses that pickup truck in a commercial
13 endeavor. In fact, I'm sure most people don't; right? The
14 plumber, and the carpenter, and the sign painter, they probably
15 use their pickup trucks for commercial purposes.

16 Is that a fair policy, to have a higher vehicle
17 registration based on a commercial rate just because it's a
18 pickup truck, and there being no differentiation between those
19 that are actually? The criteria isn't even that you have a tool
20 box attached.

21 MR. VALVERDE: I'm not aware.

22 SENATOR ASHBURN: All the people in my area have
23 gun racks on the back, too. So, be real careful about how you
24 answer.

25 [Laughter.]

26 MR. VALVERDE: Thank you.

27 Actually, I'm not aware of that. This is the
28 first I've heard of that.

1 SENATOR ASHBURN: I have an excellent bill to
2 solve that problem. You might want to take a look at that.

3 MR. VALVERDE: Okay, I will.

4 SENATOR ASHBURN: It just seems fundamentally
5 unfair.

6 Do you have a mechanism to differentiate on the
7 registration between vehicles that are truly to be registered as
8 commercial vehicles and those that are registered as passenger
9 vehicles?

10 MR. VALVERDE: Yes, we do.

11 SENATOR ASHBURN: So, those that are going to use
12 that vehicle could register with you as a commercial, they could
13 pay the higher rate, and we could relieve a lot of people out
14 there of a significant cost.

15 MR. VALVERDE: Yes, I think so.

16 SENATOR ASHBURN: I like your answer. Thank you.

17 CHAIRMAN PERATA: We're going to take a
18 ten-minute break.

19 [Thereupon the Rules Committee
20 took a brief recess.]

21 CHAIRMAN PERATA: The Rules Committee will
22 reconvene.

23 I failed to mention that we're standing in the
24 cusp of birthday parties for two of our Members, actually three
25 of our Members. It's Roy Ashburn's birthday today, and it's
26 Alex Padilla's tomorrow, and then Gil's next week, but he
27 already left I guess. He went to the party.

28 [Laughter.]

1 CHAIRMAN PERATA: Senator Padilla.

2 SENATOR PADILLA: Thank you. Where to begin.

3 CHAIRMAN PERATA: You've got seven minutes until
4 the party starts.

5 SENATOR PADILLA: That's less time than you'd
6 stand in line at DMV.

7 But just reading in the materials that were
8 dropped off at my office a couple of days ago, the 2006-2007
9 goals for the department: enhanced customer service and
10 consumer protection; reduce the impact posed by high risk
11 drivers and uninsured vehicles; and strengthening the security
12 of personal information.

13 In the security of personal information front,
14 something that's just ringing loudly and clearly with me is a
15 comment you made earlier about California's standards when it
16 comes to protecting information, and the other 49 states not
17 being quite at that same standard.

18 So, what I interpret from that statement is
19 really a lack of confidence if we're going to go down the road
20 to suggest that Californians with driver's licenses come back
21 into the system, apply for this, quote-unquote, "REAL ID"
22 knowing that that information will not only be shared with the
23 federal government, but will be accessible to 49 other states
24 that have a lesser standard of protection.

25 Am I hearing you correct.

26 MR. VALVERDE: I haven't personally evaluated all
27 49 states, but just based on --

28 SENATOR PADILLA: Even if there's one.

1 MR. VALVERDE: That's correct. And believe me,
2 that is a serious concern to us, that we would want to make sure
3 that our standard is at least the minimum standard that we
4 establish for sharing our information with any state.

5 We certainly would advocate for a higher
6 standard, but I think the California would be the standard that
7 we would want to ensure in sharing any California data or any
8 California information with any state.

9 SENATOR PADILLA: You had mentioned you have a
10 sort of draft response or draft comments to the proposed
11 regulations.

12 MR. VALVERDE: We're currently working through
13 that. Our draft response should be available early May.

14 SENATOR PADILLA: Will the Legislature have an
15 opportunity to review those before they're submitted to the
16 federal government?

17 MR. VALVERDE: Our commitment has been that we
18 would share them with the Legislature. These are public
19 comments. Everyone's eligible to submit public comments.

20 SENATOR PADILLA: How about prior to them being
21 submitted?

22 MR. VALVERDE: I think our commitment has been
23 that we would submit them as we're submitting them to the
24 Department of Homeland Security.

25 SENATOR PADILLA: And I ask only because
26 Mr. Ashburn made it abundantly clear that you're not necessarily
27 a policy maker but an administrator and implementor of the
28 policy set forth by the state officials.

1 So, when it comes to these responses to
2 regulations, I'm seeking a process here where I can be assured
3 that it does reflect the perspectives of the actual policy
4 makers, since you're not one.

5 MR. VALVERDE: Well, you know, I'm willing to
6 have that conversation with you in areas that are pertinent to
7 various Legislators or various policy groups. But I think at
8 the end of the day, they will represent the comments from the,
9 you know, executive branch.

10 SENATOR PADILLA: Coming back to the personal
11 information protection, do you have opinions or thoughts on
12 ensuring that?

13 Again, you're not a policy maker, but I've got to
14 believe that you have opinions and expertise.

15 MR. VALVERDE: Well, we want to make sure that,
16 you know, that we -- if we're talking about electronic systems,
17 that we have the same level of security that California has.

18 I think when we talked, you asked me about any
19 intrusions, things of that nature. And what I shared with you
20 is, California has a pretty high standard. We have fire walls
21 relative to accessing our data.

22 In fact, I verified this after our conversation.
23 California, you know, our data bases are secure probably up to
24 99.56 percent, something like that.

25 But I have a pretty high level of confidence.
26 And we would want to make sure that if we're sharing data
27 electronically, that we have the same level of security,
28 regardless of where we may be transmitting that data.

1 SENATOR PADILLA: And that's the kind of
2 information I want to hear. Again, even though you're not a
3 policy maker, to use Mr. Ashburn's words, you nonetheless have
4 experience and expertise to share in the form of opinions and
5 recommendations.

6 MR. VALVERDE: I think in those areas we will
7 clearly advocate for that threshold of requirement.

8 SENATOR PADILLA: Another section of your goals
9 and not so much guiding principals, but your goals when it comes
10 to high-risk drivers.

11 I know it's been a couple of years, but a few
12 years ago it was at least discussed, if not considered, by the
13 Legislature to impose additional rules and regulations when it
14 came to seniors, elderly drivers, in that potential high-risk
15 driver category.

16 MR. VALVERDE: Well, one of the things that the
17 department is undertaking and, you know, as I mentioned earlier,
18 we do have an ombuds program where we are reaching out to
19 community-based organizations. We're interfacing with area
20 agencies on aging, but we're also undertaking a -- what we refer
21 to as a three-tier pilot. And this is intended -- we're not
22 targeting seniors, but we do want to recognize high-risk
23 drivers. And through that process have high-risk drivers
24 referred through our three-tier, where you have, you know,
25 various levels of assessment of your ability to drive.

26 We're thinking through this pilot, we'll be able
27 to incorporate something in our process to deal with, you know,
28 drivers as they get older.

1 Just recently, Senator, I think it was just a
2 week ago, and I think I shared it with Senate staff, was an
3 article in Orange County where one of our driver safety offices
4 was being commended because of their outreach to a particular
5 senior. Where they developed a temporary or a localized driving
6 license which would allow that senior to, you know, commute to
7 the supermarket and to home, and areas where they were
8 familiar.

9 So, we have these different mechanisms that we're
10 looking at and trying to incorporate that, because the last
11 thing we want to do is take somebody's license away and not have
12 them any way of getting around.

13 SENATOR PADILLA: Again, in the context of your
14 experience and expertise, do you have any recommendations or
15 opinions on teen drivers?

16 MR. VALVERDE: Well, and I think many of the same
17 things I'm talking about on high-risk drivers would apply to
18 teenagers. You know, I mentioned that we were doing an ombuds
19 program, which is primarily focused on seniors. We are looking
20 at a similar approach for, you know, teen drivers or new drivers
21 so that they have a better appreciation for what does it mean to
22 be a new driver, what are the obligations, and what things
23 should you be aware of as a new driver.

24 So, I think many of the things that we're talking
25 about that might apply to our senior community would also apply
26 to our teen community, because we're dealing with both ends of
27 the spectrum here.

28 SENATOR PADILLA: What I'm hearing is, more is

1 better in terms of attention, education, training.

2 MR. VALVERDE: Absolutely.

3 SENATOR PADILLA: Would the same principals not
4 apply, again based on your experience and expertise -- I'm
5 hoping to here an opinion or recommendation -- when it comes to
6 motorists who indeed are driving in this state but without a
7 license?

8 MR. VALVERDE: Given the, you know, if it were --
9 if all things were equal, I think certainly it would be my
10 preference to have all drivers go through the testing and be
11 licensed drivers.

12 You know with respect to that, you know that
13 there are certain policies relative to what the requirements are
14 to be licensed as driver in California, and that's how I apply
15 that standard.

16 SENATOR PADILLA: I understand, but I think it
17 was important for me to hear from you today and have it be a
18 part of the record, that based on your experience and your
19 expertise, it is your opinion -- and tell me if I'm about to say
20 this inaccurately -- it is your opinion that if people are on
21 the road driving, they should be trained; they should be
22 educated; they should be licensed.

23 MR. VALVERDE: Yes.

24 SENATOR PADILLA: Now, coming back to
25 Mr. Cedillo's line of questioning about the implementation
26 impacts of the REAL ID Act.

27 In the information you submitted to the
28 Committee, I believe you estimated the potential cost of

1 implementation in the vicinity of \$500 million.

2 MR. VALVERDE: Correct.

3 SENATOR PADILLA: I heard earlier in your
4 testimony a figure of 750 million, and possibly upwards of a
5 billion?

6 MR. VALVERDE: There are certain variables that
7 the 500 million did not take into account. The examples are, we
8 will have to incorporate a new driver document or new
9 identification document.

10 Currently the state pays about 60 cents per
11 document. Our estimates, and these are just preliminary at
12 best, is that that would go up to at least a dollar and a
13 quarter. Depending on the impact of the requirements of the
14 REAL ID, that could go up by another -- up to \$2.50.

15 So, I have to be cognizant of there are certain
16 variables that we don't know what the impact is until we
17 actually procure those documents and recognize what the full
18 impact is.

19 So, what we built into that, that estimate, is
20 what I would estimate would be the 60 cents to about the dollar
21 and a quarter estimate per card issuance.

22 SENATOR PADILLA: We also discussed requirements
23 for a REAL ID. What would a REAL ID be used for, or be required
24 for?

25 MR. VALVERDE: Under the federal law, the purpose
26 of the REAL ID would allow the holder of that identification
27 card to access a commercial airline, to enter a federal
28 building, or access a nuclear power plant. Those are the three

1 specific requirements.

2 SENATOR PADILLA: So, one wouldn't be able to
3 board a commercial airline without a REAL ID?

4 MR. VALVERDE: I'm sorry?

5 SENATOR PADILLA: Is there an alternative to the
6 REAL ID?

7 MR. VALVERDE: Yes, there is.

8 SENATOR PADILLA: What is it?

9 MR. VALVERDE: If you had a passport, you could
10 use a passport for the same purpose.

11 SENATOR PADILLA: And you could use a passport to
12 enter a federal building?

13 MR. VALVERDE: Yes.

14 SENATOR PADILLA: Could you use a passport to
15 enter a nuclear power plant?

16 MR. VALVERDE: I assume so. I didn't inquire
17 about the nuclear power plant.

18 SENATOR PADILLA: That's a whole other issue. We
19 won't get into that today.

20 MR. VALVERDE: Yes.

21 SENATOR PADILLA: I guess where I'm going -- one
22 other question. The percentage of Californians that have a
23 passport, roughly?

24 MR. VALVERDE: I understand it's upwards of about
25 30 percent of Californians have passports.

26 SENATOR PADILLA: So there's potentially about 30
27 percent of folks who aren't going to necessarily rush into DMV
28 offices to obtain a REAL ID if it's not really needed. They

1 have the driver's licenses, they have their passports to get
2 into the nuclear power plant. I don't really need a REAL ID.

3 MR. VALVERDE: I guess it becomes a matter of
4 convenience. If they -- and if carrying around your passport is
5 not inconvenient, then right.

6 SENATOR PADILLA: Both a matter of convenience
7 and a matter of confidence in what's happening with my
8 information now that it's being shared with 49 other states.

9 MR. VALVERDE: Sure.

10 SENATOR PADILLA: And I don't think that's lost
11 on the minds of many Californians.

12 I raise these issues only because of the
13 astronomic projection of what you think it's going to cost to
14 implement or accommodate REAL ID. As much as they can easily
15 escalate, they can easily come down at significant orders of
16 magnitude.

17 And the federal government's not participating
18 financially whatsoever?

19 MR. VALVERDE: Well, to date, Secretary Chertoff
20 has provided discretion to the state to redirect 20 percent of
21 existing Homeland Security Grants that are allocated to states.

22 SENATOR PADILLA: So, what gets cut?

23 MR. VALVERDE: Therein lies part of our concern.
24 While Homeland Security has recognized the need to fund this,
25 they're using existing resources that are already committed as
26 making the state the decision on what's the higher priority.

27 SENATOR PADILLA: Has the administration issued
28 any sort of statement saying, "Yes, we are definitely going to

1 implement REAL ID," versus "No, we're not."

2 MR. VALVERDE: I think the Governor has been
3 pretty emphatic about, you know, raising concerns about this.
4 He sees the benefit of establishing --

5 SENATOR PADILLA: My question was, has the
6 Governor said, or the administration said, "Yes, we are
7 definitely going to implement," or have they said, "No, we are
8 definitely not going to implement it?"

9 MR. VALVERDE: I don't believe that has happened
10 yet.

11 SENATOR PADILLA: Since you know the process here
12 much better than I do, what are the consequences of California
13 not implementing REAL ID?

14 MR. VALVERDE: Well, you know, again, we get back
15 to what the REAL ID would be used for.

16 If boarding a commercial airline were the test,
17 you know, presumably a significant portion of the population
18 would not have the appropriate identification.

19 SENATOR PADILLA: Is there a consequence or an
20 impact on California as a state, our state government.

21 MR. VALVERDE: Not to my knowledge.

22 SENATOR PADILLA: So at this point, we're only
23 looking at --

24 MR. VALVERDE: Inconvenience for individuals.

25 SENATOR PADILLA: For our residents.

26 MR. VALVERDE: Yes.

27 SENATOR PADILLA: But we have alternatives. You
28 can use a passport.

1 MR. VALVERDE: That's correct.

2 SENATOR PADILLA: To enter a nuclear power plant.

3 MR. VALVERDE: That's correct.

4 SENATOR PADILLA: Why not encourage that?

5 Instead of taking on this potential cost of a billion dollars to
6 implement REAL ID, why don't we encourage Californians to get a
7 passport?

8 The cost of processing a passport is a burden on
9 the federal government, not state government.

10 MR. VALVERDE: That's true.

11 SENATOR PADILLA: And you can board your airline.

12 MR. VALVERDE: That's true. And that's a
13 possibility, I think. The state may want to advocate for that.

14 SENATOR PADILLA: Clearly, it's problematic.

15 I know you're already very active and involved
16 with it. Can you point to an example or two of where our being
17 involved and commenting on the draft regulations has already
18 influenced or impacted the federal regulations on REAL ID
19 implementation?

20 MR. VALVERDE: I'm not sure I understand the
21 question.

22 SENATOR PADILLA: We discussed this when you were
23 in my office the other day. We talked about meetings that you
24 participated in, either via an association of your colleagues
25 nationally or with the federal government when it comes to REAL
26 ID implementation.

27 Have we given them input? Have we given them
28 comments in any way that have influenced or impacted their

1 regulations already?

2 MR. VALVERDE: Yes, I think we have.

3 SENATOR PADILLA: Can you give me one or two
4 examples?

5 MR. VALVERDE: Sure. The best example is the
6 fact that they've provided the states the opportunity to extend
7 the timeframe for implementation.

8 SENATOR PADILLA: To begin implementation.

9 MR. VALVERDE: At this time that's correct, and
10 we will continue to pursue that.

11 Again, we're working through the comment period.
12 We're -- we recognize that they have taken that comment into
13 account, so we will continue to pursue that.

14 The other thing that they've done is, they have
15 allowed states some discretion on, you know, is there a better
16 mechanism, is there a better process, allowing for more
17 proactive responses through this draft review process, to allow
18 states to come up with solutions that accommodate the same
19 thing.

20 So, we're viewing this as a way to, again, affect
21 what the final outcome may be, and how it may better address our
22 concerns.

23 SENATOR PADILLA: Just a couple questions on a
24 different topic.

25 I appreciate the statistic tested and found to be
26 true by Mr. Ashburn about the wait times at DMV offices, 70
27 percent of the clients getting in and out within about 20
28 minutes.

1 What can you tell us about the other 30 percent?

2 MR. VALVERDE: Well, first let me say that I'm
3 very proud that we're getting 70 percent within 20 minutes, in
4 and out. After we had that conversation, I did go back and look
5 at what do we do in addressing the other people that are coming
6 in the office.

7 I think I also mentioned that, you know, that we
8 have an average of -- it takes one-and-a-half visits to our
9 office to complete a transaction.

10 Some of the things that I think we can do, one, I
11 think we complete over 80 percent, in some cases 85 percent of
12 transactions within 30 minutes.

13 You know, it does take in some cases up to an
14 hour or an hour-and-a-half to get the transaction completed.
15 Those are in primarily in locations where they're highly
16 urbanized, very busy offices, conducting over 2,000 transactions
17 a day, a considerable amount of traffic coming in and out of our
18 offices.

19 What we can do is, and we are doing, is through
20 our telephone service center, people can call and say, if I want
21 to come into an office, what's the closest office to my location
22 with the shortest wait time. That's one thing.

23 You can go on-line and get the same information.

24 Additionally, making sure that you have the right
25 documentation, and making sure you're prepared to deal with what
26 the transaction is that you're there to complete.

27 I think our, you know, our "Start Here" process
28 has been very successful in getting -- in accommodating people

1 and getting them in and out of our offices. And we certainly
2 want to increase the amount of services that we provide, but a
3 big part of it is, if people are going to come to our office, we
4 can't always anticipate that we're going to have 100 clients
5 today or 1,000 clients today. So, it would be helpful if we
6 could -- you know, people would do that kind of, you know,
7 review.

8 SENATOR PADILLA: Preparation before.

9 MR. VALVERDE: Yes.

10 SENATOR PADILLA: And part is our responsibility
11 as well, what sort of public information and public education is
12 taking place so that people do know, if I'm coming for a
13 license, if I'm coming in for a vehicle registration, if I'm
14 coming in for whatever it is, what paperwork I need to bring
15 along with me.

16 MR. VALVERDE: And that is available through the
17 telephone service center.

18 SENATOR PADILLA: Do we know what the wait time
19 is some have your call picked up at the call center?

20 MR. VALVERDE: I can tell you that we have one of
21 the lowest. In fact, I was surprised how low the wait times
22 are. You know, it's below a minute.

23 The number of dropped calls is -- I mean, I'm
24 just impressed with the level of service that we provide at our
25 telephone service centers.

26 SENATOR PADILLA: I'd still be interested in more
27 information as to who the other 30 percent are. You mentioned
28 it tends to be more in urban centers versus rural areas, but

1 whether it's demographics of who are, if it's a language issue
2 of why people are waiting in line longer or not, if it's the
3 type of service they're requesting, whether it's a license
4 registration versus another type of DMV service they're coming
5 in for.

6 I think that'd be very helpful in terms of
7 developing strategies or initiatives to further reduce the wait
8 time for everybody.

9 MR. VALVERDE: Absolutely. I'll get something,
10 some more additional information for you on that.

11 SENATOR PADILLA: That's it, Mr. Chair.

12 MR. VALVERDE: Thank you.

13 SENATOR DUTTON: Just a couple minor things.

14 First of all, I want to compliment you. I've
15 personally been using the internet as far as vehicle
16 registration.

17 MR. VALVERDE: Thank you, Senator.

18 SENATOR DUTTON: Even dealing with the Smog
19 Certification, I was really impressed with how easy that was,
20 and certainly a lot easier than even going to Triple A to get
21 my work done. So, I think you're heading in the right
22 direction.

23 MR. VALVERDE: Thank you.

24 SENATOR DUTTON: I feel good about the system.
25 We talked a little bit in my office about the
26 situation involving DUIs and traffic school requirements and so
27 forth.

28 Two areas of concern. Number one, we talked a

1 little bit about the people's behavior when they're attending
2 the classes and so forth, the potential complaints, or how do we
3 deal with situations if we have people who are actually showing
4 up to driving school intoxicated, and do we have a protocol in
5 place to deal with that kind of situation.

6 And then, just your general opinion, is there
7 something that we should be doing more in your opinion with
8 regards to drunk driving situations here in California?

9 MR. VALVERDE: Well, certainly I endorse the laws
10 that we have that deal with drunk driving. I think they're very
11 important.

12 What we do here at DMV is, first, we have monthly
13 meetings or periodic meetings with the Office of Traffic Safety,
14 Caltrans, CHP, and DMV. The purpose of those meetings are to
15 address these issues that cross departmental lines, and to come
16 up with a comprehensive approach to address them.

17 You mentioned this issue to me. I think it's an
18 issue that warrants further consideration that we should look at
19 in context of that forum see if we can come up with a more
20 comprehensive approach to address that issue.

21 Right now there isn't a specific avenue, short of
22 CHP, you know, issuing a citation, or something of that nature
23 for people that might be on the road that are, you know, driving
24 under the influence.

25 SENATOR DUTTON: Is there anything that you feel
26 that we ought to consider as a Legislature to help improve or
27 enhance? Or do you feel we're heading in the right direction
28 and just stay the course? Or do you feel there's something more

1 that we need to do to help with eliminating the abuses of
2 driving under the influence?

3 MR. VALVERDE: That's something I'd like to
4 discuss with my counterparts in Office of Traffic Safety, CHP,
5 and Caltrans, and see if we can get back to you with something.

6 I understand the incidents of DUIs is increasing,
7 and it may be something we need to look at in terms of what
8 further legislation may be necessary. I think we should be
9 looking at that in a more comprehensive way.

10 Let me get back to you on that, Senator.

11 SENATOR DUTTON: Just one last question involving
12 the REAL ID Act.

13 Right now, we've got the draft regs that have
14 been released by the federal government. They're out for
15 comment.

16 When is it anticipated that we're going to see
17 some final version?

18 MR. VALVERDE: Our draft reg response is due
19 early May. I think May the 8th is what I understand.

20 Homeland Security has given us a range of when
21 they might release the final regulations. That range is as
22 early as July this year to October this year. So, that's the
23 range I'm dealing with right now.

24 SENATOR DUTTON: Thank you.

25 CHAIRMAN PERATA: Anybody here who would like to
26 speak on behalf of, in favor of, very briefly?

27 MR. DOHRING: Good afternoon, Mr. Chairman and
28 Members.

1 Bill Dohring, representing the Independent
2 Automobile Dealers, and that's some 13,000 used car dealers in
3 the state.

4 Relative to your question, the Director, or the
5 appointee, Mr. Valverde, has been very helpful in getting to the
6 dealers throughout the state and holding meetings at the
7 auctions to talk about the benefits of getting on-line, and
8 we've increased it. We've also had some seminars on how to get
9 the vehicle updates for used car dealers.

10 And specifically here in Sacramento, they're
11 getting a new facility that'll be for industry customers only.
12 And we'll be able to get our work done faster and keep those
13 people out of the field offices.

14 CHAIRMAN PERATA: Thank you.

15 If we're done by 3:30, you're going to be invited
16 to the party.

17 [Laughter.]

18 MR. READ: Mr. Chairman and Members, Aaron Read
19 representing the California Association of Highway Patrolmen.

20 Obviously, the Highway Patrol has a very close
21 relationship. Our management works with him. We respect him.
22 He's done a great job.

23 We are here to support. Thank you.

24 CHAIRMAN PERATA: Thank you.

25 MR. PEREZ: Mr. Chairman, Members of Senate
26 Rules, my name is Jose Perez, and I'm here on behalf of the
27 Latino Journal.

28 And 25-plus years ago, I started working at DMV.

1 I was there for three years, when the department was actually
2 focused on public safety. And we gave driver's licenses because
3 we were so concerned about safety on the roads, and we wanted to
4 make sure that anybody that hit that road was able to drive
5 safely.

6 And we believe in that spirit, and that's why we
7 support Senator Cedillo's continuous effort to try to deal with
8 that issue because public safety is an important factor in our
9 mind.

10 And the other important factor is that we've got
11 35 million Latinos in this -- I'm sorry -- 13 million in this
12 state, 35 percent of the population. And so, any time that we
13 see state government recognize the size of this population by
14 putting people in place who are obviously, as Mr. Valverde, very
15 competent, with 30 years in state government -- I've actually
16 known him for many years -- has shown that he's one heck of an
17 honest, incredible, integrity-type of individual that I think he
18 will be a really excellent steward of the public resources and
19 the trust that you bestow on him in this very important
20 position.

21 So, we urge your Aye vote.' Thank you very much.

22 CHAIRMAN PERATA: Thank you.

23 MS. LEAKE: I'm Sally Leake. I'm with
24 Sacramento City Unified School District.

25 And I'm honored to be here today to talk a little
26 bit about working with George Valverde and his staff. I met
27 with him in January to talk about the possibility of developing
28 a comprehensive internship program for our high school students.

1 And it was George's leadership that -- I really
2 impressed with his ability to communicate his vision and
3 enthusiasm to his staff.

4 And when I left that day, the ball was all ready
5 rolling and the program started February 28th. That's really
6 impressive.

7 So, I just urge you to confirm George for
8 Director of the Department of Motor Vehicles. Our kids need
9 leaders like this, and the district, our department, is very,
10 very excited about this program.

11 Thanks.

12 CHAIRMAN PERATA: Thank you.

13 MR. NALDOZA: Mr. Chairman, Members of the
14 Committee, my name is Art Naldoza.

15 I've known George for 30 years, and during that
16 time I've worked with nonprofit organizations and associations.
17 And all that time, I can think of very few people that have been
18 as helpful as George has been to community-based groups.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MR. PES CETTI: Mr. Chairman and Members, my name
22 is Anthony Pescetti.

23 I had the opportunity of working with George 20
24 years ago in my days at the Department of General Services. And
25 I also had the chance of working with George Valverde when I was
26 a Member of the State Assembly and found George to be of the
27 utmost and the highest integrity and dignity.

28 I recommend your support of his confirmation as

1 well.

2 CHAIRMAN PERATA: Thank you.

3 MR. WELSH: Senators, Peter Welsh with the
4 California Motor Car Dealers Association.

5 George is a leader of really great quality and
6 confidence, and we really urge your confirmation of him.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 MR. DAVENPORT: Mr. Chairman and Members, Allen
10 Davenport with the Service Employees International Union.

11 On behalf of a lot of public employees we
12 represent, we're very pleased when one of our own can come to
13 the top of a department. It's the ambition of a lot of state
14 employees.

15 But personally, I've known and worked with George
16 for 20 years, and I think you'll find him on the daily job as
17 thorough and as cautious as he was here today, but you can count
18 on him.

19 We're for SB 60, and we're for George Valverde.

20 CHAIRMAN PERATA: Thank you.

21 MR. DUNPHY: Good afternoon, Mr. Chairman,
22 Members of the Committee. My name is Tom Dunphy. I'm with
23 Lamont Financial.

24 And I've worked with George since 1983, when he
25 was at the State Public Works Board, and I find him to be of
26 unbelievable integrity, but mostly tenacious. He'll get the job
27 done.

28 I urge your support.

1 CHAIRMAN PERATA: Thank you.

2 MS. MORA: Mr. Chairman, Members of the
3 Legislature, my name is Miryam Mora. I'm with Donate Life
4 California.

5 And on behalf of Donate Life California and the
6 four federally designated organ procurement organizations, we
7 fully support the nomination of George Valverde as Director of
8 the DMV.

9 It is evident that he's a true leader in
10 providing a more responsive and customer friendly government to
11 citizens of California. Specifically, under Mr. Valverde's
12 great leadership, Donate Life California recently celebrated a
13 headline-grabbing milestone: more than one million have now
14 signed up to give life at the DMV.

15 We applaud George Valverde for his forward
16 looking and visionary support of the Donate Life California
17 registry. Under his leadership, the DMV implemented Senate Bill
18 689, establishing an incredibly successful partnership between
19 the organ procurement organization, donor registry, and the DMV.
20 George Valverde has provided the needed leadership that we need
21 to make this private-public partnership the success that is
22 being touted nationwide.

23 He is a strong and visionary leader for the State
24 of California, and we fully support him as the Director of the
25 DMV.

26 CHAIRMAN PERATA: Thank you.

27 MS. PFLAUM: Good afternoon, Mr. Chairman and
28 Members. My name is Katherine Pflaum, and I'm President of the

1 Filipino-American State Employees Association.

2 I am one of seven employee associations at the
3 DMV. And we work on upward mobility for employees and
4 developing effective leaders.

5 And recently, our Director, Mr. Valverde, has
6 worked with us and encouraged and supported a very extensive
7 upward mobility program to help develop employees at DMV. He's
8 shown his leadership and vision, and he's also supported --
9 shown support for all the DMV employees in all of his programs.

10 And we encourage you -- we support the
11 confirmation of Mr. Valverde.

12 CHAIRMAN PERATA: Thank you.

13 MS. LEWIS: Hello. My name is Martha Lewis, and
14 I am an officer and member of the Latino Hispanic Employees
15 Association, which is comprised of DMV employees who also
16 support Director Valverde.

17 Director Valverde is a hands-on, approachable,
18 positive director. I've been with the department for over 20
19 years, and never have I seen an outreach as Director Valverde.
20 Not only does he go out to the employees during Mother's Day,
21 Father's Day, holidays, but he also went out -- he spoke to us
22 during a tragic death of one of our employees.

23 Director Valverde has demonstrated to the Latino
24 Hispanic Employees Association and the DMV employees his sincere
25 interest and support in working for DMV.

26 And when we see his picture up on the field
27 offices, it's not like he's hovering over us.

28 [Laughter.]

1 MS. LEWIS: It's really, we are working hard for
2 him, and that's how we feel.

3 So, I also urge your Aye vote.

4 CHAIRMAN PERATA: Thank you.

5 By the way, he's Portuguese.

6 [Laughter.]

7 MS. CHARLES: Good afternoon, Chairman and
8 Members. Thank you for allowing me this opportunity to speak to
9 you today.

10 My name is Kathy Charles. I'm President of Black
11 Employees United for Equality, which is one of the organizations
12 at the Department of Motor Vehicles.

13 I'm here today in support of our Director,
14 supporting his confirmation, and I'm just going to share with
15 you just a few things that I 've jotted down here before. I
16 don't have a pencil here, so I can't scribble them out again and
17 rewrite it.

18 But what he does is, he promotes teamwork, and he
19 promotes upward mobility. He's always encouraging while
20 projecting a positive attitude. I've been in some of the
21 Director's -- in some of his staff meetings, and so I'm there to
22 see first-hand what it is that he's doing all the time.

23 And with everything that he does all the time,
24 all the projects and whatever, he always has time for the
25 employee associations. And we really do appreciate him.

26 Director Valverde diligently works always to
27 ensure the goals of the department are met. He is committed to
28 ensuring the quality of service provided to our customers. He

1 provides excellent service always. He's a true leader. We
2 respect him, and we wish him continuous success.

3 And I hope and pray and wish that he's confirmed
4 again. Thank you for your time.

5 CHAIRMAN PERATA: Thank you.

6 MS. MAESTAS: Good afternoon. My name is Terry
7 Maestas. I'm an employee at the Department of Motor Vehicles.
8 I am the Vice President of the Hispanic Employees Association.

9 And just to put everything in a nutshell, along
10 with what the other association members have said, Mr. Valverde
11 has opened in doors to all the employees, down to rank and file,
12 all the way to upper management.

13 Where he has his goals set, the employees at DMV
14 want to meet those goals he has. Because he makes himself open
15 to the employees, they see the interest that he has. So, what
16 that does, it makes us as employees want to do the work, want to
17 set that goal at DMV, and want to make you all be proud of us.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MS. HEREDIA-SAUSEDA: Mr. Chairman and Members,
21 thank you for this opportunity. My name is Louise Sauseda.

22 I'm not an employee of DMV, and I'm not a
23 relative, but I've known George for about 25 years. He and I
24 started out at the Department of Finance, or were hired at the
25 Department of Finance at about the same time, when there was a
26 concerted effort made to recruit Hispanics into Finance. The
27 level of representation was not significant.

28 We have gone through many administrations

1 together. And one of the things that characterizes George in my
2 mind is the point in time after we first arrived, there was a
3 change of administration. Many of us did not have the same
4 philosophical beliefs of the incoming administration, but the
5 point that, you know -- our reason for staying was that we
6 wanted to be able to bring to the table our experiences as
7 individuals and make sure that those experiences were
8 represented in the analysis that we did, in the policy
9 discussions that we had. And if we left, we would not have that
10 opportunity to impact.

11 That George is in this position or is in a very
12 responsible position now and continues to represent that same
13 thought and philosophy, we all have to deal with different
14 interests and different needs, but I think he's fair.

15 I've worked with him both as a co-worker at
16 Finance, and also had responsibility for overseeing and perform
17 a control agency role over the State and Consumer Services
18 Agency budget when he was at the State and Consumer Services
19 Agency.

20 He has always had a level of integrity. He has
21 always had a level of commitment. And he continues to serve as
22 a source of encouragement for numerous state workers who see his
23 success and work to try and be -- make him as proud of us as we
24 are of him.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 Anything further to add, David?

28 There's nobody here in opposition, is there? No,

1 there's not.

2 Would you like to say anything in conclusion?

3 MR. VALVERDE: Well, I'm --

4 CHAIRMAN PERATA: You don't have to.

5 MR. VALVERDE: I just want to say, I want to
6 thank all my supporters. You never know how you're doing, and I
7 think that was -- really touched me.

8 CHAIRMAN PERATA: Well deserved.

9 I just want to say a couple things that are
10 probably obvious, but I do that best.

11 One is, for a lot of Californians the DMV is
12 where they really have the only contact with state government.
13 And that's a good and a dangerous thing. I think it's good in
14 that your delivery of service now is probably better than it has
15 been delivered.

16 It's bad because I do think that REAL ID could
17 well be the undoing of the department, and could be a huge
18 political problem for those of us who serve the public.

19 I support your appointment and confirmation, but
20 I am very concerned about the way in which California is
21 approaching Washington in this regard. And there is nothing
22 that you can do that will involve the political decision making
23 that goes on here.

24 But if I had to make a decision today, I would
25 not support the funding of the REAL ID program. I think this is
26 one of the most egregious examples of an unfunded mandate, where
27 the federal government says that this is a national security
28 problem, but we're going to off-load the responsibility and the

1 costs to the states. Only a damned fool would accept those
2 terms.

3 While there has been a recent change in the
4 political leadership in Congress, the fact of the matter is this
5 is the law of the land, and it is being administered by the same
6 administration that our Governor is party to. Whether they want
7 to accept that he's a Republican or not, it doesn't matter.
8 That's not my problem.

9 This Governor has to do a better job of letting
10 the White House know that if California is not satisfied, it
11 ain't going.

12 I would venture to say that if California doesn't
13 go, a lot of other states are going to say why should we.

14 And with that, I urge you to do everything you
15 can at your level administratively to give an honest appraisal
16 of what we can and cannot do, and the time constraints that have
17 been provided, the cost that's going to be involved, and simply
18 the order of magnitude of doing something that we've never done
19 before.

20 I think you well grasp the inordinate
21 responsibility here, and I thank you for doing that. And I
22 would have only one suggestion for you when you leave here.
23 Under these circumstances that we've just described, you may
24 want to take your picture down from all those offices.

25 [Laughter.]

26 CHAIRMAN PERATA: Just leave the Governor up
27 there.

28 [Laughter.]

1 SENATOR ASHBURN: Move.

2 CHAIRMAN PERATA: Please call the roll.

3 SECRETARY WEBB: Cedillo.

4 SENATOR CEDILLO: Let me also add a comment to
5 the obvious.

6 CHAIRMAN PERATA: Add a postscript.

7 SENATOR CEDILLO: REAL ID presents some real
8 challenges for the state. It's our national strategy for safety
9 and security, and yet some of the questions and some of the
10 circumstances that Congress has thrust upon us don't seem to
11 make sense.

12 It seems reasonable -- I was impressed -- it
13 seems reasonable that we would not comply. We'll simply ask
14 others to get a passport, and California can go it's own way.
15 It's a large state.

16 On the other hand, I accept the strategy that we
17 should know who lives in our nation. And I accept your
18 direction that motorists should be licensed, tested and insured.
19 So, I think we should do all that we can to implement REAL ID
20 for everyone in California and everyone in this nation.

21 So, I appreciate your responses, not all of them,
22 but I understand the constraints. I think Senator Ashburn
23 helped me appreciate them more in delineating your restrictions,
24 and I appreciate Senator Ashburn's questions.

25 I know that you are a fine administrator. I'm
26 impressed by the presence of SEIU here, very impressed by their
27 presence, by the different employee associations, by the general
28 feel within this very, very large organization that workers are

1 treated with dignity and respect.

2 So, I am pleased to join in voting for you.

3 I want to work with the administration with you
4 and your department, but also with the administration because
5 this is a very serious and daunting challenge that confronts us.
6 We can lead the nation, but it will require all of us to lead
7 and work together.

8 So, I'm happy to vote aye.

9 CHAIRMAN PERATA: Thank you.

10 Allen, he was impressed that you were here
11 because you're normally at the card club at this hour.

12 [Laughter.]

13 CHAIRMAN PERATA: Please call the roll.

14 SECRETARY WEBB: Cedillo.

15 SENATOR CEDILLO: Aye.

16 SECRETARY WEBB: Cedillo Aye. Dutton.

17 SENATOR DUTTON: Aye.

18 SECRETARY WEBB: Dutton Aye. Padilla.

19 SENATOR PADILLA: Aye.

20 SECRETARY WEBB: Padilla Aye. Ashburn.

21 SENATOR ASHBURN: Aye.

22 SECRETARY WEBB: Ashburn Aye. Perata.

23 CHAIRMAN PERATA: Aye.

24 SECRETARY WEBB: Perata Aye. Five to zero.

25 SENATOR PERATA: Congratulations.

26 MR. VALVERDE: Thank you.

27 Let me say, Senator, now I think Bill Cather can
28 retire.

CHAIRMAN PERATA: No, no. Ain't that easy.

[Thereupon this portion of the
Senate Rules Committee hearing
was terminated at approximately
3:40 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2007.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



March 7, 2007

The Honorable Don Perata
President pro Tempore of the Senate
State Capitol – Room 205
Sacramento, CA 95814

Dear Senator Perata:

Thank you for your letter dated February 21, 2007, advising me that my confirmation hearing date before the Senate Rules Committee will be March 14, 2007. Included in that transmittal were a list of questions designed to help the committee members assess my qualifications and experience, and to determine my knowledge of the major issues facing the Department of Motor Vehicles.

The attached materials contain my responses to those questions. I hope they provide a clear and concise assessment of the many challenges facing the department over the next several years and my readiness to lead this fine organization.

I look forward to discussing these and any other matters you and the Rules Committee Members may have when I appear before you next week. In the meantime, if I can provide any additional information or clarification prior to the hearing, please contact me at your convenience at (916) 657-6941.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Valverde".

GEORGE VALVERDE
Director

Attachments

cc: Governor Arnold Schwarzenegger
The Honorable Roy Ashburn, Vice-Chair, Senate Rules Committee
Dale E. Bonner, Secretary, Business, Transportation & Housing Agency

**RESPONSES TO QUESTIONS FROM THE
SENATE RULES COMMITTEE
REGARDING THE CONFIRMATION OF
GEORGE VALVERDE
DIRECTOR, DEPARTMENT OF MOTOR VEHICLES**

Background

1. What goals do you hope to accomplish during your tenure as director of the Department of Motor Vehicles?

Response: One of my first goals as the director was to set the course and direction of the department by embracing Governor Schwarzenegger's vision of creating a State government for the 21st Century. We are highly customer-focused and everything we do is designed to improve our services to the people of California on their terms – the way they want and need to be served.

I challenged each and every member of my executive staff to identify the major priorities and issues the department was facing. The result of that evaluation process appears in our Strategic Plan (Attachment #1). This document expresses our commitment to achieve our key priorities of *service, safety, and security*.

I have set several goals to meet these objectives, including the following:

Enhance Customer Service- Based on our years of experience, and using techniques such as customer surveys, focus groups, town hall meetings and stakeholder feedback, we know that DMV customers want clear and convenient choices in how they do business with us. They expect fast, courteous, and knowledgeable service. The bottom line is that customers expect to do business with government the same way they do business outside of government.

We are now working on a multi-faceted plan to change the mindset of customers in how they do business with DMV. We started a marketing campaign to educate customers about the growing number of DMV services now available on-line. Our website is continually being updated to further enhance online processing for specific transactions and user friendly information for easier driver license or vehicle registration processing.

We can tell that Californians are taking notice. In 2006, we saw more than a 30% increase in online transactions and appointments. The result has been a continued reduction in field office wait times, which translates to better customer service for everyone. (More detail on wait times is contained in the response to Question #18).

The combination of marketing and business enhancements make good business sense. Better customer service equates to saving taxpayers time and money. In combination, these types of system enhancements and service alternatives will allow us to strategically address what we anticipate will be a substantial increase in our workload caused by the implementation of the REAL ID Act.

Customer service also involves collaboration and consumer protection. We participate in efforts that benefit Californians, businesses, and DMV. One example is the Organ Donor Program. The department has been instrumental in helping the Organ Donor Registry exceed over 1 million donors over the past several months. We continue to build partnerships with businesses that conduct services on behalf of the department such as vehicle dealers, auto clubs, and salvage and wrecking yards. We have increased our consumer protection by educating the public regarding their rights when dealing with vehicle-related businesses licensed by DMV.

Improve Safety of Drivers and Vehicles- Cars and driving are a way of life in California and DMV plays a key role in that driving culture. We do this by ensuring drivers are qualified through testing, monitoring and regulating driving privileges. Californians can now find customer-friendly, interactive information on our website regarding: rules of the road, safe driving practices and the consequences of driving in an unsafe manner.

At DMV we work closely with law enforcement to ensure actions are taken against unsafe drivers and vehicles within established timeframes. We are looking at new ways to evaluate the driving ability of high-risk drivers and take corrective measures against the driving privilege of drivers who become safety risks. To make sure vehicles are safe and insured, we implemented SB 1500 which allows the department to cancel the registration of any vehicle that does not have a valid policy in effect at all times.

DMV is collaborating with grass roots public safety organizations like Recording Artists, Athletes & Actors Against Drunk Driving (RADD), a nonprofit organization that uses celebrity-driven messages to create positive attitudes and raise awareness about road safety to young adults. We also work with senior coalitions and teen focus groups to address their related concerns. These efforts help DMV to promote safe driving, awareness and education regarding programs to improve driving skills at all ages of the driving continuum.

Strengthen The Validity And Security Of Personal Information- We know that personal information is a valuable commodity and must be protected. Assuring the security of information entrusted to us is a top priority. We continually educate our employees about the security and privacy of personal information and how it is collected, stored and released. We cancel fraudulent documents, applications, and Drivers License/Identification cards (DL/ID).

We are enhancing the security features of our DL/ID cards. Our efforts to strengthen the validity of the documents we issue and to enhance security to better protect the personal information we maintain, promotes customer confidence and facilitates the use of our online services.

I recognize that our employees are the key to our success. They represent a customer-focused, solution-oriented, and innovative workforce. The Strategic Plan provides clear and consistent guidelines that will help focus our efforts and insure success in achieving our goals. We have disseminated these documents throughout the organization so that our employees can see just what a critical role they play in driving change by keeping our focus on our customers.

Through use of this successful planning methodology and enlisting our employees to help drive change, it is my job to insure that DMV will continue to set the standard for customer service and be a model for 21st Century government.

2. What do you perceive to be the most important issues confronting the department within the next year and distant future?

Response: There are several important issues confronting the department within the next year.

First, we are faced with the growing issue of an aging workforce. As these experienced members of our workforce leave, they take with them many years of institutional knowledge. To address this we are in the process of implementing a detailed succession plan, with a focus on recruitment, retention, mentoring, and leadership development.

Next, is the issue of implementing the REAL ID Act. If and when enacted, REAL ID will have a huge impact, both on our resources and our levels of customer service. We continue taking actions to mitigate and reduce the possible impacts on our business. Our business and marketing strategies are designed to move more and more customers on-line and out of our field offices, which is absolutely critical.

We will also be developing pilot projects to continue to address high-risk drivers and enhance our current testing processes. Throughout this developmental process, we will continue to meet and dialogue with senior and teen driver groups for their perspective and feedback.

In supporting the Governor's 2004 Executive Order, DMV is taking a leadership role, in cooperation with the Department of General Services, in promoting green government practices throughout our infrastructure. The DMV has already been awarded a Gold certification in the Leadership in Energy and Environmental

Design (LEED) program for the state of the art energy and resource efficiencies we used in the new San Ysidro field office.

We will continue to implement our multi-year Information Technology (IT) Modernization project to replace our outdated IT infrastructure. Our outdated, legacy based database infrastructure has outlived its usefulness, and its systematic sequential replacement will continue to be a high priority through the rest of this decade.

Underscoring all of these issues is the ongoing challenge to meet the needs of a diverse and changing California demographic. We address the reality of an aging workforce, approaching retirement, with a succession plan that includes an expanded Leadership Academy and one-on-one mentoring. Identifying the best way to serve our diverse customers is addressed by first surveying and asking them what languages they expect to conduct business in and then expanding online services to meet those needs.

At the DMV, our motto is "Driving Change." We will continue to address the issues and challenges of the day, but we want to take full advantage of emerging technologies to help us meet our service goals. In his first inaugural address, Governor Schwarzenegger pledged, "I will not rest until the people of California come to see their government as a partner in their lives...not a roadblock to their dreams." That is what the DMV is all about.

3. What is the current status of the pending federal regulations affecting the implementation of the REAL ID Act? When do you expect the regulations to be released publicly? Are there any significant changes from what is currently known in the pending regulations?

Response: The Federal Department of Homeland Security (DHS) released the draft regulations on March 1, 2007, with a 60-day public comment period. The department immediately began an intensive effort to review the regulations in its entirety. This is a multi-divisional effort with experts from all impacted areas of operation within the department analyzing the exact wording in the regulations and completing an assessment of the impact of each provision on their respective operations.

This assessment will be included as part of the statewide review and analysis of the impacts of the REAL ID regulations prepared by the California REAL ID Steering Committee, which is comprised of 11 state agencies. The committee is organized into six Work Groups covering the following disciplines: 1) Policy and Legislation; 2) Financing; 3) Information Technology; 4) Privacy and Security; 5) Law Enforcement, and 6) Communications.

A detailed report showing the anticipated impact of the regulations is being prepared by the department and will soon be presented to the Legislature for review and analysis. The following provides an overview of the key provisions that appear to present the greatest challenges for California:

- Security, Privacy, and Information Access
- Re-Credentialing Existing Drivers
- Connectivity to other States' Driving Records
- Verification of Identity Source Documents
- Costs and Cost Recovery
- Program Initiation and Completion Timeframes
- License and ID Card Security Features
- Verification of Principal Residence Address
- Employee Background Checks
- Non-Conforming Driving Certificates
- Pending Applications for Asylum, Change of Status, and Temporary Status

4. What specific issues or concerns has the department raised with the federal government concerning the implementation of the federal REAL ID Act in California?

Response: We have made our concerns known to DHS since shortly after the Act was passed on May 11, 2005. Our communications with the regulators have covered a wide range of critical issues. Included in the list are the lack of federal funding, the absolute necessity of having several large national computer systems in place prior to implementation (e.g. verification of identity documents and license status in other states), adequate safeguards to protect confidential personal information, the need to grant flexibility to states when it comes to specific driver license/identification card security features, to name a few. Now that we have seen the proposed regulations, it appears that few of these concerns have been addressed.

Even the initial indication that delays in implementation will be granted to states that request it provides little relief as the regulations provide no extension on the back end. All licenses will still have to be converted to the new system by the original May 10, 2013, deadline. This is in spite of the fact that several pieces of correspondence from Governor Schwarzenegger, former Agency Secretary Sunne Wright McPeak, Office of Homeland Security Director Matthew Bettenhausen, as well as my own letters have been transmitted to members of Congress and to officials at the federal Department of Homeland Security over the past 18 months which explain in detail the concerns which we have concerning the Act.

We have previously provided copies of the correspondence between Administration officials and elected representatives and federal regulators as part of our December 15, 2006, Report to the Legislature on the Status of the REAL ID Act. Since that time I have sent additional letters to representatives of the federal Office of Management and Business while they were reviewing the draft regulations. Attached to this transmittal (Attachment #2) you will find copies of these additional materials for your information.

What issues do you think are the most important to California and its citizens?

Response: I believe that Californians are most concerned about the significant inconvenience and expense they are likely to encounter if, as it appears, all currently licensed drivers and ID card holders must come back into a DMV office when these documents expire. Not only will they be required to appear in person, but unless a substantial investment is made to increase the department's infrastructure and personnel resources, customer wait times are likely to increase significantly.

As part of that process they will be required to present a certified copy of an acceptable identity document, in most cases a birth certificate or a passport. They will also have to present two forms of documentation to verify their principal address of residence.

They will be concerned about the fact that the department will be required to retain digitized copies of these documents and that they may be shared with other states and federal agencies. They will want assurances that we have put in place safeguards that protect their privacy and ensure that confidential information is not inadvertently released to persons not authorized to receive it.

They will see it as a failure of government if the federal requirements are not met in a timely manner and they are prohibited from using their California driver's license or ID card to board commercial aircraft or enter federal buildings.

Californians are also likely to ask why a federally-mandated program ends up costing the state an estimated \$500 million over five years with no federal reimbursement of these sizable expenditures? They will want assurances that this significant investment in their time and tax dollars has truly increased national security and improved our ability to protect our nation against terrorism.

5. It has been assumed that the federally imposed implementation date for the REAL ID in California would commence on May, 2008, and allow for a five year implementation timeframe. However, in a letter you sent to USDHS, dated January 26, 2007, you raised the prospect of the timeframe being extended. What are your current expectations with respect to the implementation schedule for REAL ID in California? How could the DMV, and the state, benefit from an extended timeframe?

Response: With the release of the regulations on March 1, 2007, it is now clear that states have been given very little, if any, real relief in implementing the Act. The draft regulations indicate that states may request and would likely be given an extension until December 31, 2009 to begin implementation. However, that delayed date does not extend the May 10, 2013, date by which all currently licensed drivers must be recertified as REAL ID compliant. Therefore, while the states may have a little latitude with regard to “when” the conversion starts, such an action would merely compress the problem and give states less than 5 years to complete the recertification process.

The only real benefit to be derived from a delayed implementation period would be to give federal regulators, the states, and Congress more time to evaluate appropriate funding mechanisms to deal with the substantial, and to this point, unfunded federal mandates.

6. In a report submitted to the Legislature on December 15, 2006, your department estimated that the cost to the state to implement the REAL ID Act would be \$500 million. Could you briefly describe the basis for that estimate? Is that still the most accurate estimate the department has for compliance?

Response: The estimate given to the California Legislature in 2006 was based on preliminary information received after speaking with the Department of Homeland Security on several different occasions. This information assumed that all cardholders would be required to appear in our field offices over a period of 5 years, that our DL/ID card costs would increase, and that some major programming efforts would be needed to handle the new requirements of the Act. Now that the regulations have been released, it appears that there will be little change in our initial estimates of \$500 million over the 5-year implementation period.

7. What response, if any, have you received from Secretary Chertoff regarding federal reimbursement of the \$18.8 million in state funds provided to the department in the 2006-2007 Budget Act to begin planning for REAL ID?

Response: Secretary Chertoff’s office responded to my letter on December 1, 2006. DHS indicated that no additional money could be spent until the Department of Homeland Security submitted a spending plan. To date a spending plan has not been prepared or submitted to Congress. DHS also stated that until the *final* compliance regulations have been promulgated, it is premature to entertain any reimbursement requests from states. A copy of that response (Attachment #3) is attached for your information.

8. The department has indicated that it will pursue state legislation and an additional appropriation of state funds this year to continue work toward implementing the REAL ID in California. What is the status of the department's proposed statutory changes and what is your estimate of state funds needed in 2007-2008 for the REAL ID implementation?

Response: Assembly Member Huff is carrying AB 1433 on behalf of the Administration. Because the draft regulations had not been released by the bill introduction deadline here in California, the provisions in AB 1433 are considered preliminary. As the legislation moves through the process, we will work with the author and the committees to include provisions that support our good faith effort to comply with those provisions in the Act deemed appropriate for California.

The Governor's 2007/2008 Budget included a reference to the fact that, due to lack of specifics, no appropriation funding request would be included in the initial Governor's Budget. However, as more information becomes known, additional funding may be requested as part of the May Revise process. To date, no decisions have been made as to exactly what provisions will require immediate action and how much, if any funding will be requested through Spring Finance Letters. We intend to keep the Legislature, and especially the respective Budget Committees and Subcommittees of both Houses, fully informed as this process moves forward.

9. It is anticipated that in fulfilling the requirement of the REAL ID Act the department's field office will assist an additional 2.5 million people per year. Aside from the logistical issues relative to the compliance of the Act, what steps are you taking to promote customer service and protect against long wait times?

Response: In our ongoing efforts to enhance our levels of service to the public, the department has developed new ways for Californians to conduct business with us. For example, we have significantly increased the number of private sector business partners who conduct their business with us electronically. Included in this has been the addition of a number of Industry Service Centers, which allow vehicle dealers and others to bring their transactions to a separate DMV facility so that the public does not need to compete with these industry customers for service.

We are piloting "self-service terminals" at several of our locations. These devices are available outside the DMV office and can be accessed 24 hours a day, seven days a week. They accept cash, checks, or credit card payments and issue registration stickers and other common documents.

Drivers with clean driving records can renew their licenses online. With

millions of vehicle owners already renewing their annual car registration online, these two service options provide an easy alternative for our customers and have helped reduce in-person visits.

Drivers and vehicle owners can now file a change of address online, calculate registration and licensing fees when they purchase a vehicle, notify us when they have sold a vehicle and file their release of liability form online. There will be additional applications coming to our website soon to help reduce traffic in our offices, including a program to allow California identification card holders to renew their ID cards online.

We are also very focused on meeting the on-going needs of our in-person customers and we have developed a comprehensive 5 year facilities plan that ensures our offices will be of adequate size and conveniently located for years to come.

We are utilizing the talents of professional consultants in a number of areas to ensure that we are conducting business in the most efficient manner and we are benefiting from their perspectives on how best to plan for the future.

REAL ID Questions

10. The REAL ID Act provides for a federally-recognized driver's license for persons who have a pending application for adjustment of immigration status. This is a category of potential licensees who we do not currently license in California.

Does the department have an estimate for the number of people in California eligible for a license under this category?

Response: The department has asked the federal immigration authorities for an estimate of the number of persons residing in California who currently have pending applications in one of the three categories specified in the Act. To date, they have not responded and it appears that they may not be able to supply accurate data for these categories.

The three designated categories are:

- Pending application for asylum,
- Pending application for temporary protected status, and
- Pending application for adjustment of status.

The regulations go on to say that the application numbers issued under these categories will be loaded into the Systematic Alien Verification for Entitlements (SAVE) system, which is an electronic database which California has used for

over ten years to confirm the authenticity of documents presented to show legal presence status.

Given this clarification, the department will certainly include those persons whose applications have been accepted and loaded into the federal SAVE system and which can be verified as genuine. Therefore, we can easily be in full compliance with these requirements as this will simply be an expansion of our current legal presence verification program.

How does the department plan to accommodate this group of people?

Response: The federal immigration authorities have not provided estimates on the number of persons residing in California who fall into one of the three categories of pending applicants. However, based on the language in the regulations, this should not represent a significant workload. We will certainly reevaluate this issue when the final regulations are published, but at this time the workload appears to be absorbable.

Does the department have the technological capacity today to accommodate this group of people?

Response: Yes. Given the language in the regulations, this is expected to be a small and manageable increase over current volumes of legal nonimmigrants.

11. The Legislature has passed, and will likely consider again this year, legislation to implement both the mandatory and optional provisions of the REAL ID Act.

How much, if any, additional cost would the department incur to implement the optional provisions of the Act (i.e. issuance of driving-only licenses)?

Response: Our current infrastructure could not accommodate the estimated two million undocumented immigrants of driving age who might apply for a driving certificate under the optional provisions of the Act. The department has completed a fiscal analysis of Senate Bill 60 by State Senator Gilbert Cedillo and we conclude that implementing a driving-only certificate program would require an additional 612 positions, thirteen new facilities, and would cost between \$150 and \$200 million over the 3-year period necessary to accommodate the two million persons eligible to seek certificates. (Note: This costing takes into consideration the impact of SB 60 only and does not include any of the separate impacts of the REAL ID Act.)

In a recent meeting with Senator Cedillo regarding REAL ID, I expressed my concerns about the department's ability to handle any additional workload

beyond the 24 million current drivers and ID card holders who will have to be certified over the next five years. If the potential volume of 2 million undocumented immigrants of driving age living in California is added to that volume, we believe it would be virtually impossible to maintain adequate service levels in our offices.

Do you know of other states that have implemented the optional provisions of the Act?

Response: No states have implemented the optional licensing provisions contained in the Real ID Act.

We are aware that the State of Tennessee implemented a driving-only certificate program in 2004, which was later abandoned in early 2006. The reasons given for the discontinuation were that undocumented immigrants from outside Tennessee were flocking to the state to obtain the driving certificates. Since Tennessee is a state that issues its driver's licenses over-the-counter, where the final photo document is issued the same day as the application is completed, they were soon overwhelmed.

We are also aware that the State of Utah implemented a special driving-only certificate program in July 2005, which is still in effect. Utah has a "residency" requirement and does not issue its licenses over-the-counter. Therefore, many of Tennessee's problems were not encountered by Utah officials. Utah requires applicants under this program to submit an Individual Taxpayer Identification Number (ITIN).

Do you have a view as to whether the issuance of driving-only licenses, as permitted by the REAL ID Act, is the appropriate policy for California?

Response: Speaking only from my perspective as the Director for the Department of Motor Vehicles, I believe that a person who has not been properly tested and licensed should not get behind the wheel of a motor vehicle. I am aware that many persons who have had their driving privilege suspended or revoked, or who have never had a license do routinely break the law and drive without the benefit of a driver's license.

It is an indisputable fact that persons that drive on our roadways should first be tested and licensed. However, there are several groups of drivers that represent increasing risk and the department would like to have the resources to address each and every one of these. Impaired drivers, whether because of illness or other factors, are a growing concern. Accident rates among young drivers that result in injury and death is a critical issue that needs attention. Repeat drunk drivers continue to be a threat on our highways. The dilemma we face is that we simply do not have unlimited resources to address these critical problems.

We must now add to this mix the requirements posed by the REAL ID Act. As mentioned, we estimate our costs would be \$500 million over a five-year implementation timeframe. If the implementation is delayed, yet the final compliance date remains the same (May 10, 2013), then these costs would be considerably higher due to the problem of bringing drivers in for re-certification before their existing licenses expire. The issue is not so much whether or not to grant licenses to undocumented individuals, but what the public policy priorities must be in light of the huge volumes of persons involved and the limited resources available.

We must first deal with the re-certification of our 24 million currently licensed drivers and ID cardholders before entertaining any plan to add 2 million undocumented immigrants to the licensing program. As mentioned earlier, we will already be adding 2.5 million currently licensed drivers to the 2 million that already appear in-person at our 169 field offices to renew their licenses each year. This tremendous influx presents a great challenge that we hope can be somewhat mitigated by the many alternative service methods we have developed.

In addition to these license renewal applicants, the department currently processes 850,000 original driver's license applications each year. This requires a complete examination process, including the behind the wheel driving test. All of the estimated 2 million undocumented immigrants that would apply for a license under an expanded plan would also be given this full range of examinations, nearly tripling our current workload of original applicants. Given these facts, I cannot recommend to policy makers that they entertain such a plan at this time.

12. The Identification Security Enhancement Act of 2006, S. 4117, was introduced in the U. S. Senate. The bill will repeal the REAL ID Act. What should California's position be on this bill that would repeal the REAL ID Act?

Response: The opportunity to act on this legislation expired when the 109th Congress adjourned in December 2006. However, in my meetings with staff from the Office of Senator Akaka from Hawaii, who was the author of S. 4117, similar legislation will be reintroduced in the 110th Congress but that the decision whether or not to move it forward will depend upon the contents of the final regulations. I have also met with Congressional Staff from the offices Senators Feinstein and Boxer, as well as several of our California Congressional Delegation. I have alerted them to the primary concerns impacting California's efforts to implement the Act and I have been assured of their interest and support.

We have also been tracking the progress of S. 563, by Maine Senator Susan Collins, which was introduced on February 13, 2007. It is designed to provide relief for states with regard to implementation timelines contained in the REAL ID Act. However, the initial review of the proposed regulations indicate that DHS will still expect all drivers to be converted to REAL ID-compliant licenses by the original deadline of May 10, 2013, which means states who request a delay in implementation will be forced to complete the conversion in less than 5 years.

Even though we have been monitoring Congressional activities regarding the Act, the fact remains that the Administration is just now going through the process of reviewing and evaluating the draft regulations. It would be premature to advocate independently for the repeal of the Act, especially given the bipartisan Congressional support for the recommendations of the 911 Commission which includes improving the security of state driver's licenses and ID cards.

I have attached a copy (Attachment #4) of a policy statement from the National Governors Association released during their recent meeting in Washington DC. This document details the major areas of concern that we and most other states share given our current understanding of the Act and the draft regulations.

The REAL ID Act increases the amount of personal-identity information the department will collect, verify, and retain. The act also requires California to allow other states access to information contained in its motor vehicle database.

13. What privacy concerns do you have about the REAL ID Act?

Response: I fully support California's exemplary privacy laws and consider privacy protection a top priority as the department begins the process of reviewing and assessing the impact of the REAL ID regulations.

Our initial review of the regulations indicates that we will continue to be able to provide protection for most of the groups already protected by residence address confidentiality laws (e.g., domestic violence victims). While the recently released Federal regulations appear to provide for safeguarding address information for some of the other protected groups (e.g. law enforcement), further analysis is still needed to determine the full impact of these provisions.

I am also concerned that the requirement to include certain types of personal identifying information in electronic format on the DL/ID card, and in a shared database, could jeopardize the privacy and safety protections enjoyed by our citizens under current state law.

The Act requires states to capture and store images of identity source documents in a transferable medium. These source documents may contain highly privileged information such as a mother's maiden name, social security number

and place of birth which are highly desirable components for identity theft. Until the Federal regulations are analyzed, it is unclear whether this type of information will be required to be included in the motor vehicle database that is to be accessible to other states. While we believe that current statute protects the confidentiality of such documents, sharing of imaged source documents or any "coding" elements related to the source documents on a nationwide accessible database raises elevated privacy concerns.

It is for these reasons that we agreed to be one of four states who participated in a "federation" approach to systems development and privacy protections. The federation is comprised of experts in Information Technology from the motor vehicle departments in California, New York, Massachusetts and Iowa. This involvement has allowed us to stay in the forefront of discussions regarding the manner in which these systems will be developed and deployed. More importantly, we have had considerable input as to the types of safeguards that will be built into these systems to insure privacy and confidentiality and to prohibit tampering.

14. Does the department have the necessary computer technology and expertise to securely accommodate the data collection, verification, and retention requirements of REAL ID? If not, what is your plan for the department to be "systemically ready" to implement the requirement of REAL ID?

Response: The department has undertaken definitive steps to prepare its computer systems for REAL ID. Specifically, we are currently expanding the capability to accommodate a person's true full name and we are developing a platform for an expanded web presence.

In addition, we have deployed internet programs to begin shifting customer transactions away from field offices. These programs include changing addresses, calculating fees for tax purposes, and filing release forms when selling a vehicle. These and other applications that are under development will help in the implementation of REAL ID.

As far as security and retention of data is concerned, the department has been securing its data collection and storage for years. The department has also taken advantage of technological advances in security and implemented the latest tools to prevent unauthorized access. In addition, there are several security features and audit layers in place to ensure the integrity and privacy of personal data.

REAL ID will require a number of technical modifications, many of which still need to be defined. However, we are using our position as a member of the federation of states working on the technical aspects of creating these databases to insure that privacy and confidentiality are given the highest priority.

15. The department said that as early as January, 2007, it will secure the services of a data security consultant to ensure that privacy and security issues are identified and appropriately addressed.

What is the status of the IPSO contract? Have we secured these services?

Response: Contract procurement documents were prepared in November 2006. These were approved for release to the vendor community using the California Multiple Award Schedule Program (CMAS) as a Request for Offer (RFO), number EXE06-0028. The RFO was posted January 29, 2007, with offers due by February 28, 2007. The response due date was extended due to 2 state holidays, and to give bidders adequate time to analyze and submit their offers. The schedule award date has been reset to March 16, 2007.

What specific services are being provided by this consultant?

Response: The Statement of Work specifies that the following services must be provided by the consultant under the Privacy and Security Enhancement Project (PSEP):

1. PSEP Readiness Assessment: The consultant working with the DMV team will determine the potential impact of the DHS' REAL ID regulations on current DMV Privacy and Security policies, and prioritize risk to other projects DMV is conducting to modernize and/or meet REAL ID.
2. Benchmarking, Risk, and Gap Analysis: Using available state and federal standards, evaluate the current policy and procedures for privacy and security, find where DMV is in variance with those standards and the REAL ID regulations, and prioritize the risk those "gaps" pose to DMV processes.
3. DMV PSEP Roadmap: Develop a plan to fill in the gaps identified, and work with DMV to mitigate the risks.
4. Updated PSEP Roadmap: Review the implementation of the privacy and security roadmap (plan) to ensure safeguards are in place and working.
5. Final PSEP Roadmap Report: A final audit level review and report, detailing the controls put in place and presenting any risks unmitigated in the Update portion.

16. Separate from the REAL ID Act, do you believe current privacy-related provisions in the Motor Vehicle Code are sufficient?

Response: Over the past thirty-five years or more, the Legislature has enacted a comprehensive body of law designed to protect the privacy of personal information from unauthorized access. The Vehicle Code contains a significant number of specific statutes that clearly govern the types of information that may be collected and stored, and the types of entities that may legally have access to that information. A key event in the history of the state's confidentiality statutes came following the tragic death of actress Rebecca Schaeffer in 1989. Following that event, the Legislature acted quickly to afford greater protections for individuals to guard against the unauthorized release of residence address information maintained in the department's data files. That program has been a tremendous success and we are extremely proud of our role in protecting the sensitive information entrusted to us by the residents of this state.

From a more global perspective, the California Constitution gives each citizen an "inalienable right" to pursue and obtain "privacy". The Information Practices Act within the Civil Code expands those protections by placing limits on state agencies with regard to collecting, managing and disseminating personal information. As mentioned above, California's existing statutes are very comprehensive in this subject area and are more restrictive than those contained in the federal Driver Privacy Protection Act. Our challenge is to retain this level of privacy and to insure that these safeguards are not overturned or significantly modified when REAL ID is implemented.

Wait Times

In February 2004 the Legislative Analyst's Office said that the current average wait time at the department's field offices was approximately 60 minutes.

In November 2005 the department issued a statement saying field office wait times were down to 20 minutes after a long series of customer-service improvements. These customer-service improvements include eliminating the \$4 convenience fee which applied to online transactions.

17. What steps were taken in accomplishing this decrease in the wait times?

Response: The department took several steps to decrease the wait time including eliminating the \$4 convenience fee for online services, implementing a "best practices" approach where successful procedures were shared, expanding use of customer management software, and adding staff to field offices.

The elimination of the \$4 convenience fee increased customer use of the early online services and avoided field office visits for those customers. In the field offices, "Start Here" windows were added to offices with staff that could "triage" the customers ensuring that they had the proper paperwork to handle their transactions.

The Customer Management Software tool was expanded from 92 to 135 field offices enabling issuance of service tickets to customers based on their service need and the ability to call them to the appropriate counter to be served. This also allowed managers to shift staff to match customer needs. Also, an additional 400 staff were added to offices statewide and used during peak hours in offices with long wait times.

In April 2004, enhancements were implemented to allow customers to make appointments and renew Vehicle Registration over the telephone through an Advanced Speech Processing system further reducing the need for an "in-person" field office visit. The department also implemented customer service improvements to address the growing demand for telephone services and the increasing number of busy signals received by customers. The Interactive Voice Response system capacity was expanded and additional staff were hired which resulted in a reduction in busy signals from a high of 9 million to less than 250,000 per month.

All these improvements contributed to better customer service over the telephone and at field offices.

What steps are you planning to take to continue this success?

Response: I am committed to continuing the development and release of new online services that alleviate the need to visit field offices. The department now provides 11 online services including Driver License Renewal, filing Notices of Release of Liability and Changes of Address. My plan is to roll-out a new online application to better serve our customers at least every 120 days.

I also believe there many opportunities to greatly expand our Business Partner Automation (BPA) Program. This program provides a best value relationship with private industry (auto dealers, registration services, dismantlers, etc.). Since implementation of the BPA Program, 1 million transactions have been redirected from field offices. This is just the beginning and broader expansion of BPA, coupled with the increased number of Business Service Centers dedicated to our commercial customers, we will further reduce overcrowding in our public service facilities.

I will continue to evaluate the customer benefits of flexible service hours in our field offices. We currently provide Saturday service in 53 field offices, and all offices are open Monday through Friday.

We are currently expanding the availability of debit transactions so that customers have more convenient payment options. Added to our credit card and e-check options, customers will have more choices than ever before in deciding the best payment method to meet their individual needs.

The department has just rolled-out a focused Media Campaign explain the many benefits of our Online Services. With the assistance of a public relations firm, we are educating the public through our campaign slogan, "*Save Time - Go Online.*" This message is being utilized on billboards, radio advertising and through other Internet search engine tools and websites. This targeted campaign is another component to reduce wait times by having higher online service usage.

18. What is the current average wait time at a field office?

Response: The department has been making continued strides in improving customer service and reducing wait times in field offices. During calendar year 2006, more than 15 million, or 70%, of our customers were served within 20 minutes in the largest 135 offices. The department keeps detailed records of wait times and uses this data as an effective management information tool to make staffing adjustments. Customers can go online to the DMV website and get real time information regarding the current wait time at their local DMV office.

19. What is the average number of online transactions in a day? What percentage of all transactions are completed online? What steps are you taking to improve your online services?

Response: The DMV processes, on average, 41,000 online transactions every calendar day. This means that nearly 25% of all of the driver's license and vehicle registration transactions we process are now being handled through our online web applications.

One of the major elements in improving customer service has been the continuing rollout of new online services which are available to Californians any time of day or night, 24-7. In 2006, I set a departmental goal of raising the percentage of these online transactions by 30% within a year. I am pleased to report that we have accomplished just that.

In 2005, the DMV conducted some 3.55 million transactions online; the bulk of them being Vehicle Registration Renewals. In 2006, we increased our online transactions to over 4.6 million; representing a transaction increase of 31%.

Vehicle Registration Renewals on the web went up from 2.93 million to 3.88 million; which is a 34% increase over the previous year.

A key contributor to this online improvement has been the development of a concerted radio and billboard marketing campaign, promoting our customer-focused online services. We also enhanced our web infrastructure so that our Business Partners could conduct more transactions online in a more efficient manner.

Our goal in 2007 is to increase Vehicle Registration Renewal online transactions to 5 million transactions and our overall transactions to over 6 million transactions. The more we can do online, the better we can serve those that do need to come into our field offices—it's a win-win for everyone.

One clarification that needs to be inserted here is that the department currently receives cash payments from almost 30% of its field office customers. While we want to maximize the use of online services, we recognize that a significant portion of the motoring public will continue to come into our offices and conduct their business in person and pay for those transactions in cash.

Population and Demographic Growth

20. Do you believe current law and regulations are sufficient to address the projected increase of retirement age drivers? If not, please explain why.

Response: According to the Governor's Budget for 2007-08, California's population will increase by 2.5 million people by July 2011. Within this same five-year timeframe, the number of persons aged 65 and over will increase by over 500,000. This represents an increase of nearly 13 percent.

Currently, the Vehicle Code authorizes peace officers, physicians, and specified family members to file a report with the DMV when they encounter an individual they believe may no longer possess the skills necessary to drive safely. Age, in and of itself, does not constitute evidence of a condition requiring a reexamination of driving ability. Considering the sizable population increases projected in this state over the next 5 years, especially among older drivers who tend to have more problems than other age groups with regard to diminished driving skills, there is no question that the department's current staff of trained driver safety experts will be insufficient to handle this growing workload.

The Driver Safety Branch within the department is comprised of individuals who are skilled in evaluating physical and mental impairments and conducting reexaminations to determine if, for reasons of safety, a person's driving privilege should be withdrawn or restricted. Although older drivers make up a high

percentage of the cases investigated, drivers of any age may become impaired by diseases or disabilities that limit their ability to safely operate a motor vehicle.

In our effort to prepare for these challenges, the department has initiated several traffic safety and customer service programs, including:

- Special Instruction Permits. For drivers who have been unsuccessful in passing the road test portion of the re-examination process, a special permit can be issued to allow the drivers to seek professional driving assistance and practice longer before attempting a subsequent driver proficiency examination.
- 3-Tier Driver Assessment Study Project. The 3-Tier Driver Assessment project involves development of an integrated assessment system to determine the driving fitness of applicants seeking to renew their driver licenses and drivers referred to DMV for reexamination (referrals) regardless of the driver's age. The department is currently conducting a pilot and, if successful, will serve as a model intended to extend driving years for some individuals by identifying possible barriers to safe driving, by educating customers on how to correctly compensate for any limitations they may have, and by providing them with alternatives to full licensure, such as restrictions that limit the scope of their driving.
- Conveniently Located Driver Safety Hearing Centers. We have improved accessibility to our Driver Safety Branch services by increasing the number of hearing points.
- The Strategic Highway Safety Plan (SHSP). This requirement of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), is designed to improve safety on all public roads by quantifying safety issues; identifying performance measures and targets; guiding transportation stakeholders to the most effective safety strategies and countermeasures; identifying available funding sources; and providing methods for monitoring safety projects and initiatives. The plan will contain the most effective behavioral and infrastructure strategies and countermeasures involving sixteen safety challenge areas, which include an initiative to improve safety for older roadway users. Completion date: October 2007.
- The Older Californian Traffic Safety Task Force (OCTS). This task force is chaired by the California Highway Patrol to ensure that the recommendations from the California Task Force on Older Adults and Traffic Safety are implemented.

Information Technology

The department is currently undergoing a seven-year \$242 million Information Technology Modernization Project. Most of the current computer programs have been used by the department for more than three decades. The system operates on programming language that is obsolete and no longer taught in schools. The department's computer programmers proficient in the computer's operating language are nearing retirement. The intent of phasing the project over seven years is to realize some of the benefits quickly while mitigating the risk of changing the system all at once. The 2006 Budget Act appropriated \$2.1 million for the first year of this modernization project. This year's budget includes \$24 million for second year of the project.

21. How will you handle the coming retirement of these computer programmers who are proficient in the existing computer's program language? Will there be enough of these programmers to see the seven-year project to completion?

Response: Of the current legacy programmers, one-third are currently eligible for retirement. Over the course of the next seven years, the majority of the remaining two-thirds will become eligible for retirement.

The department recognizes this vulnerability and has been actively involved in a succession planning effort. We have a detailed succession plan that we are using successfully to promote talented staff to levels of higher responsibility, while performing outreach to attract the best and brightest to public service at DMV. These efforts, coupled with the modernization of our Information Technology infrastructure, will mitigate the impact of the impending loss of skilled Information Technology staff.

In addition, the department has been involved in the statewide effort, under the direction of Clark Kelso, of restructuring the technical classifications. This will streamline the process of hiring qualified and skilled technical staff.

The Information Technology Modernization effort includes the establishment of a number of civil service positions within the DMV for this massive programming effort. These new positions are a key ingredient in the DMV's succession planning. In addition to the civil service positions, the department will leverage the private sector to help in the execution of the Information Technology Modernization effort.

22. Given the history of automation, what periodic measures of success will you employ to ensure a project is on track, on time, and within budget limits?

Response: The department has learned several lessons from its past and more importantly its recent successes. Over the past few years, the department has enjoyed the success of many automation projects. For example, vehicle registration over the internet, driver license renewal over the internet, address changes over the internet, and the organ donor program. These successes have been possible because of a well defined structure in executing the projects and these same principles will be used for the Information Technology Modernization project.

In particular, we will employ an evolutionary approach that specifies incremental progress. First the databases will be migrated to a modern technology. This will be followed by the reprogramming of the front-end programs. The final step will be the reprogramming of the back-end programs. At the end of each step we will be able to evaluate the success prior to moving to the next step. These incremental steps dramatically reduce the risk of failure that accompany a comprehensive overhaul. Each of the incremental steps provide a logical evaluation step in the success of the project.

In addition to the project's approach, there is heavy oversight on the project and the effect on the entire department. This oversight is being carried out on a project specific level and an enterprise level. Oversight reports are prepared monthly and quarterly and detail all issues that arise on the projects. In addition, mitigating strategies are developed as necessary. This external view coupled with an internal verification and validation effort will ensure the timely and successful completion of the project.

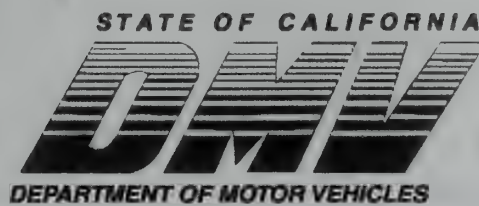
23. Does the modernization project take into account the technological needs and costs which may be required under the REAL ID Act?

Response: Yes, the Information Technology Modernization project takes into account the technological needs of the Real ID Act that are known at this time.

The Information Technology Modernization project upgrades the department's computer programs and databases. The project was designed to accommodate the needs of all the projects within the department, including The REAL ID Act. These aspects are scheduled to be completed in synchronization with the implementation dates of the Act.

ATTACHMENT 1

DMV STRATEGIC PLAN



DRIVING CHANGE

STRATEGIC PLAN 2006



ARNOLD SCHWARZENEGGER, Governor
State of California

SUNNE WRIGHT McPEAK, Secretary
Business, Transportation and Housing Agency

GEORGE VALVERDE, Director
Department of Motor Vehicles

We are pleased to present the Department of Motor Vehicles 2006 Strategic Plan. This plan was developed in concert with Governor Schwarzenegger's vision and challenge to achieve the "first government of the 21st Century." It will guide the Department in the next 18-24 months and embrace the Department's vision of driving change. We will drive this change with a customer-focused, solution-oriented, and innovative workforce, delivering services to Californians; when, where and how they want those services.

With direct involvement of the Director and total commitment of the executive staff, an assessment of the Department's current condition and strategic direction was conducted. The performance-management methodology used was in direct alignment with that of the Performance Improvement Initiative (PII).

Our process was initiated by having each of the executive staff identify the issues faced by our organization. Based on the results, a series of meetings was held to review and update the Mission, Vision and Core Values. We then established goals to support the Mission and Vision, and created corresponding Performance Measures to ensure the Department's accountability.

The goals were then translated into objectives. These objectives will provide our Department and its employees, the Agency Secretary, other control agencies, and the Governor with insight into how DMV will measure its success. Additionally, the objectives will guide policy and the decision-making process, and assist in establishing priorities for the Department.

Within this Strategic Plan is our commitment toward real priorities - service, safety, and security - and the activities that will achieve the Department's desired outcomes based on those priorities. This plan also illustrates that DMV is aware of and prepared to meet the future challenges that are related to these priorities. We will continue to add to our successes at 'driving change.' This plan cannot be implemented without the contributions of the entire DMV workforce. With continued dedication, we will serve our customers in new and innovative ways. Each one of our employees contributes to the positive customer experience, the safety of drivers and the security of personal information.

The Department is committed to achieving the objectives detailed within our 2006 Strategic Plan. Simply put, the DMV stands by its goals and it will be demonstrated by these detailed quantifiable objectives. We are driving change to become that 21st Century government that the Governor challenged us to be, for the people of California.

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MISSION, VISION, and CORE VALUES

MISSION:

California DMV will effectively and efficiently serve the public by:

- Registering vehicles to identify and authorize use, and titling vehicles to establish ownership interest, for consumer protection.
- Licensing and regulating the motor vehicle industry, and licensing drivers to protect consumers and promote traffic safety.
- Establishing true identity to ensure the validity of licensed drivers and identification card holders, and securing personal information for consumer protection.

VISION:

CALIFORNIA DMV: DRIVING CHANGE
CUSTOMER-FOCUSED • SOLUTION-ORIENTED • INNOVATIVE

CORE VALUES:

California DMV embraces the following as our Core Values:

- Honesty and integrity.
- Respect and consideration for each employee and customer.
- Accuracy and quality in all our products and services.

GOALS and OBJECTIVES

The California DMV has identified the following Goals and Objectives:

GOAL: Enhance customer service and consumer protection

OBJECTIVES:

- Increase the percentage of surveyed customers who rate DMV's service as 'satisfactory' or better, by 1%, by June 30, 2007.
- Reduce the percentage of consumer complaints against DMV licensed or unlicensed businesses that resulted in a DMV action, by 5%, by June 30, 2007.
- Increase the percentage of surveyed consumers who know of the existence of the Car Buyer's Bill of Rights, by 10%, by June 30, 2007.

GOAL: Reduce the impact posed by high-risk drivers and uninsured vehicles

OBJECTIVES:

- Reduce the percentage of vehicle registration suspensions enforced for lack of insurance, by 1%, by June 30, 2007.
- Increase the percentage of actions taken against high-risk drivers within established timeframes, by 4%, by June 30, 2007.

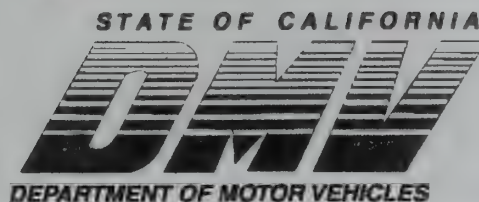
GOAL: Strengthen validity and security of personal information

OBJECTIVES:

- Increase the number of Driver License/Identification Cards cancelled for being fraudulent, by 5%, by June 30, 2007.
- Reduce the annual number of incidents that involve the security of personal information, by 1 incident, by June 30, 2007.
- Increase the percentage of surveyed governmental and commercial entities who rate their confidence in the California Driver License/Identification Cards as 'above average' or 'excellent', by 20%, by June 30, 2007.

NOTE: The objectives are designed to reflect the net change in data from July 1, 2006 to June 30, 2007.

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DRIVING CHANGE

ACTION PLAN 2006

Addendum to Strategic Plan 2006



ARNOLD SCHWARZENEGGER, Governor
State of California

SUNNE WRIGHT McPEAK, Secretary
Business, Transportation and Housing Agency

GEORGE VALVERDE, Director
Department of Motor Vehicles



These Action Plans were created using the California Performance Review's Performance Management Handbook and are in alignment with the Performance Improvement Initiative (PII) performance-management process.

FY 2006/07					
Strategic Issue:	DMV should continuously focus on its customer service.				
Goal:	Enhance customer service and consumer protection.				
Objective:	Increase the percentage of surveyed customers who rate DMV's service as 'satisfactory' or better, by 1%, by June 30, 2007.				
Strategy 1:	Implement Succession Plan (recruitment, retention, classification, compensation, recognition, mentoring, and workforce development).				
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
Expedite investigator background checks	Associate Governmental Program Analyst (AGPA), Associate Personnel Analyst (APA)	60 hours	2 Business Staff – existing	12/01/07	
Enhance manager trainee program (Recruitment)	Diane Pardue	100 hours	1 Business Staff – existing	01/01/07	
Implement alternate selection process for DMV managerial & supervisory classifications (Demonstration Project)	Al Estrada	109 hours	3 Business Staff – existing	01/01/07	
Enhance mandatory Basic Supervision and Leadership Training	Joan Masterson, 1 Departmental Training Branch (DTB) Staff	Ongoing	2 Business Staff – existing	02/01/07	
Develop Mentoring/Internship Program	Amy Albert	80 hours	1 Business Staff – existing	03/01/07	
Develop and implement recruitment of Investigator Trainees for Investigations	Diane Pardue	70 hours	1 Business Staff – existing	06/01/07	
Develop an implement managerial and supervisory training for Investigators	Staff Services Manager I (SSM I), Staff Services Analyst (SSA)	160 hours	2 Business Staff – new	06/01/07	
Implement refresher Supervision and Leadership Training	Training Officer I	160 hours	1 Business Staff – new	07/01/07	
Increase Manager Trainee Program (Training)	Sara Sepulveda, 2 DTB Staff	600 hours	3 Business Staff – existing	01/01/09	
Continue DMV Leadership Academy	David Silva	Ongoing	1 Business Staff – existing	Ongoing	
Design and implement Leadership Excellence Seminars	David Silva	24 hours per seminar	1 Business Staff – existing	Ongoing	
Institute quarterly manager meetings	SSM I, SSA	120 hours per meeting	2 Business Staff – new	Ongoing	

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Strategy 2:	Implement the 5-Year Infrastructure Plan, which outlines DMV's approach to managing and planning the Department's building infrastructure (brick and mortar) in consideration of projected population and program changes, and in accordance with Assembly Bill 1473 (Ch. 606 statutes of 1999) and the Department of Finance Manual of Procedures.				Completion Date		
Action Plan Step					Time Frame	Resources Required	Completion Date
2007/08 5-Year Infrastructure Plan							
Complete and submit 5-Year Infrastructure Plan to DOF					5,032 hours	8 Business Staff – existing	08/31/06
Complete and submit Capital Outlay Budget Change Proposals (BCPs) to DOF					160 hours	5 Business Staff – existing	09/01/06
Complete and submit support BCPs to DOF					160 hours	5 Business Staff – existing	09/01/06
2008/09 5-Year Infrastructure Plan							
Research, data gathering, and analysis					4,000 hours	3 Business Staff – existing	Ongoing
Meet with divisional representatives					80 hours	3 Business Staff – existing	02/01/07
Develop draft plan					700 hours	3 Business Staff – existing	04/01/07
Present draft and solicit comments					12 hours	3 Business Staff – existing	04/15/07
Prepare 2nd draft of plan					240 hours	3 Business Staff – existing	05/01/07
Prepare Capital Outlay BCPs					160 hours	3 Business Staff – existing	05/01/07
Prepare support BCPs					160 hours	3 Business Staff – existing	05/01/07
Prepare final draft plan package for submission to Executive Staff					480 hours	7 Business Staff – existing	05/15/07
Prepare final draft plan package for submission to BTH and DOF					480 hours	7 Business Staff – existing	06/01/07
Strategy 3a:	Strategic Payment Plan – Implement Electronic Fund Transfer (Driver License Renewal on the Internet) as an additional payment option. This payment option will save DMV over \$1.5 million in discount fees paid to the vendor annually.						
Action Plan Step					Time Frame	Resources Required	Completion Date
Identify business rules, prepare priority memo					300 hours	26 Staff from various areas – existing	09/29/06
Program coding and unit test					264 hours 500 hours	2 Business Staff – existing 1 Consultant – new (\$62,500)	11/22/06
System test and user test					175 hours	1 Business Staff – existing 1 IT Staff – existing	12/15/06
Implement live production online					80 hours	8 Staff – existing (Business, IT)	12/22/06

Strategy 3b:	Strategic Payment Plan – Expand ATM/Debit Cards acceptance into Remaining 77 Field Offices to enhance customer services to field office customers.				
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
	Install phone lines in the remaining 77 offices	Tim Crompton, Suzanne Crowder, Telecommunication	480 hours	5 IT Staff – existing	09/13/06
	Prepare 'Go Memo' regarding expansion of ATM/Debit cards in remaining 77 field offices	VR Publishing	8 hours	1 Business Staff – existing	09/22/06
	Request Merchant Identification Numbers (MIDs)	Renee Nakamura	8 hours	1 Business Staff – existing	10/18/06
	Install, program, and test ATM devices in remaining 77 field offices	Regional Coordinators	308 hours	22 Business Staff – existing	10/31/06
	Train Field Office staff and control cashiers in remaining 77 field offices	Regional Coordinators	385 hours	22 Business Staff – existing	11/01/06
	Project coordination and administration	Ginette Williams (ASD), Janetta McReynolds (FOD), Jan Barney (FOD)	280 hours	3 Business Staff – existing	11/01/06
	Modify reconciliation queries	Renee Nakamura	4 hours	1 Business Staff – existing	11/03/06
	Modify statistical reports	Renee Nakamura	8 hours	1 Business Staff – existing	11/18/06
Strategy 4:	Award contract for Document Image and Storage Replacement (DISR) Project - This project will obtain a replacement system capable of meeting Micrographics workload demands to provide a permanent storage media that allows for secure access from requesters, readable images, and the ability to capture and store digital and electronic images to meet the needs of current users and the requirements of the Federal Real ID Act. The system will also allow for input of images and data from local and remote sites.				
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
	Release Invitation for Bid	Robin Fry, DGS	8 hours	1 Business Staff – existing	10/16/06
	Bidders submit final proposals	DISR Evaluation Team Bidder	48 hours	6 Staff – existing (3 Business, 3 IT)	11/17/06
	Conduct reference verifications	DISR Evaluation Team	32 hours	4 Staff – existing (3 Business 1 IT)	12/01/06
	Conduct demonstration test and complete evaluation	DISR Evaluation Team	144 hours	6 Staff – existing (3 Business, 3 IT)	12/13/06
	Select vendor	DISR Evaluation Team	144 hours	6 Staff – existing (3 Business, 3 IT)	12/15/06
	Post Notice of Intent to Award	DGS	-	No DMV resources required	01/03/07
	Award contract	DGS	-	No DMV resources required	01/10/07

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Strategy 5:		Allow access to Driver License/Identification Record (DL/ID) over the Internet.			
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
Release of Request For Proposal	Paul Benedetto, Denise Hendricks, Marisa Duarte-Lott, Ann Richardson	176 hours	4 IT Staff – existing	09/15/06	
Final submission of proposals	Vendors	632 hours	Vendors – new	01/12/07	
Review of proposals	Paul Benedetto, Gary Dias, Amran Din, Denise Hendricks, Dean Hipwell, Kerry Kaempf, Richard Kashiwada, Marisa Duarte-Lott, Ann Richardson, Kris Warren	184 hours	10 IT Staff – existing	02/15/07	
Award contract	Paul Benedetto, Gary Dias, Amran Din, Denise Hendricks, Dean Hipwell, Kerry Kaempf, Richard Kashiwada, Marisa Duarte-Lott, Ann Richardson, Kris Warren	240 hours	10 IT Staff – existing	04/02/07	
Implementation	WSI Team and chosen vendor	1,000 Hours	6 Staff – existing	01/08	
Strategy 6:		Roll out self-service terminals statewide.			
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
Develop Feasibility Study Report	Barbie Robards, Douglas Wilson, Richard Kashiwada, Kai On, Marle Vane 1 Consultant	685 hours	4 Business Staff – existing 1 IT Staff – existing 1 Consultant – new (\$83,300)	10/31/06	
Develop Spring Finance Letter	Barbie Robards, Douglas Wilson	120 hours	2 Business Staff – existing	12/15/06	
Develop Information Technology Procurement Plan	Larita Polk, Barbie Robards, Douglas Wilson, Richard Kashiwada	120 hours	3 Business Staff – existing 1 IT Staff – existing	01/15/06	
Develop Request for Proposal	Larita Polk, Barbie Robards, Douglas Wilson, Kai On, Marle Vane, Richard Kashiwada, Judy Ayala	650 hours	5 Business Staff – existing 2 IT Staff – existing	06/30/07	
Conduct procurement process to select vendor	DGS Analyst Larita Polk, Barbie Robards, Douglas Wilson, Kai On, Marle Vane, Richard Kashiwada	1,300 hours	5 Business Staff – existing 2 IT Staff – existing 1 DGS Analyst	04/01/08	
DMV system development	Richard Kashiwada, Judy Ayala 7 Staff Programmer Analysts 3 System Software Specialist II's APA (Specialist), SISA (Specialist)	5,000 hours	14 IT staff – existing	06/02/08	

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Vendor system development	Barbie Robards, Douglas Wilson, Richard Kashiwada, Marle Vane, Kai On Vendor	8,000 hours	4 Business Staff – existing 1 IT Staff – existing 1 Vendor – new (see below for \$)	07/31/08
Site identification and infrastructure development	Barbie Robards, Douglas Wilson Departmental Construction/ Maintenance Superintendent SSM I, ABMA, MGR III, Vendor	2,000 hours	7 Business Staff – existing Vendor staff – new (see below for \$)	08/29/08
Standardized sticker testing	1 Contractor Barbie Robards, Douglas Wilson	700 hours	2 Business Staff – existing 1 Contractor – new (estimated \$5,200 for contractor services)	08/29/08
Test system	Carrie Chew, 2 Staff Programmer Analyst (Specialist), Barbie Robards, Douglas Wilson, Kai On, Marle Vane	550 hours	4 Business Staff – existing 3 IT Staff – existing	08/29/08
Install and deploy terminals	Vendor Barbie Robards, Douglas Wilson, Richard Kashiwada SPA (Specialist), SISA (Specialist)	2,080 hours	2 Business Staff – existing 3 IT Staff – existing vendor staff – new (estimated \$1,975,000 per contract year for "pay per completed transaction" vendor contract)	08/31/09
Post Implementation Evaluation Report	Barbie Robards, Douglas Wilson	685 hours	2 Business Staff – existing	12/29/09
Ongoing customer service support and system maintenance during contract period	Vendor Barbie Robards, Douglas Wilson, Kai On Staff Programmer Analyst (Specialist) DMV Field Office Managers Other Location Managers	10,000 hours	3 Business Staff – existing 1 IT Staff – existing Selected DMV Field Office and other location managers – existing Data Center Service (\$86,600 annually) Vendor staff – new	08/31/13
Strategy 7: Increase promotion of services and resources utilizing the marketing consultant.				
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
Develop marketing plan to promote DMV Internet Services	Mike Marando/Katz & Associates	Various	MRO and Contractor Staff	11/01/06
Write scripts in targeted languages	Katz & Associates	Various	MRO and Contractor Staff	11/01/06
Conduct market research and outreach to customer base	Katz & Associates	Various	MRO and Contractor Staff	01/31/07
Electronic, print, outdoor media	Katz & Associates	Various	MRO and Contractor Staff	03/31/07

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Strategy 8:	Implement Automated Driver License testing statewide.				
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
Develop plan to deploy two field offices	AGPA/SSM I	2 hours	2 Business Staff – existing	09/15/06	
Develop Statement of Work	AGPA/SSM I	20 hours	2 Business Staff – existing	09/22/06	
Evaluate vendor response	AGPA/SSM I/AISA	10 hours	2 Business Staff – existing 1 IT Staff – existing	09/29/06	
Award contract	AGPA/SSM I	4 hours	2 Business Staff – existing	10/06/06	
Design and test	AGPA/SSM I/AISA	20 hours	2 Business Staff – existing 1 IT Staff – existing	10/20/06	
Install machines (vendor)	AGPA/AISA	8 hours	1 Business Staff – existing 1 IT Staff – existing	10/25/06	
Expand Statement of Work	AGPA/AISA	160 hours	1 Business Staff – existing 1 IT Staff – existing	12/07	
RFP, evaluation and selection	AGPA/ Staff ISA	320 hours	1 Business Staff – existing 1 IT Staff – existing	02/15/07	
Award contract	AGPA/AISA	10 hours	2 Business Staff – existing	03/01/07	
System design and development	3 AGPA/ SSM I, 2 MGR III, 2 Staff ISA, 1 Staff Programmer Analyst	320 hours	6 Business Staff – existing 3 IT Staff – existing	04/15/07	
Test	1 MGR III 3 Staff ISA	160 hours	1 Business Staff – existing 3 IT Staff – existing	05/15/07	
Install stand-alone system in 45 field offices	AGPA/SSM I/ MGR III	200 hours	3 Business Staff – existing	06/30/07	
Develop Feasibility Study Report and obtain approval	AGPA/ Staff ISA	1,056 hours	1 Business Staff – existing 1 IT Staff – existing	03/03/07	
Develop Budget Change Proposal and obtain approval to roll-out statewide	AGPA/ Associate Budget Analyst	160 hours	1 Business Staff – existing 1 Budget Office Staff – existing	06/03/07	
Develop Information Technology Procurement Plan obtain approval	AGPA/ Staff ISA	80 hours	1 Business Staff – existing 1 IT Staff – existing	09/03/07	
Develop and release Request for Proposal (RFP)	AGPA/Staff ISA	960 hours	1 Business Staff – existing 1 IT Staff – existing	02/01/08	
Evaluate and select. Issue contract	2 AGPA, 1 SSM I, 1 MGR III, 1 Staff ISA, 1 Staff Programmer Analyst	2,880 hours	4 Business Staff – existing 2 IT Staff – existing	05/01/08	
Design and develop system	3 AGPA, 1 SSM I, 2 MGR III, 2 Staff ISA, 1 Staff Programmer Analyst	8,532 hours	6 Business Staff – existing 3 IT Staff – existing	07/01/08	
Test system	3 Staff ISA / MGR III	704 hours	1 Business Staff – existing 3 IT Staff – existing	08/01/08	
Implement statewide	AGPA,SSM I, MGR III	1,584 hours	3 Business Staff – existing	10/01/08	

Strategy 9:	Implement Telephone Service Center Equipment Replacement (TSCER) Project - (The Department is currently evaluating a second option for the TSCER project -CalNet II. Once the CalNet II contract is awarded, DMV will determine if the vendor can provide the services DMV needs.)					Completion Date
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required		Completion Date	
Procurement- <ul style="list-style-type: none">Hire Quality Assurance vendorHire IV&V/IPOCHire vendor for project	TSCER Project Team	1,000 hours	13 Staff – existing (Business, IT)		06/10/06	
	TSCER Project Team	2,000 hours	13 Staff – existing (Business, IT) 5 Contractors – new (Quality Assurance Vendor, IV&V and project vendors) (total contract costs \$ 674,478 and TBD for external vendors)		07/30/07	
	TSCER Project Team	1,000 hours	13 Staff – existing (Business, IT) 5 Contractors – new (Quality Assurance Vendor, IV&V and project vendors) (TBD for external vendors)		04/01/08	
Implementation <ul style="list-style-type: none">Site 1Site 2	TSCER Project Team	1,500 hours	15 Staff – existing (Business, IT) 5 Contractors – new (Quality Assurance Vendor, IV&V and project vendors) (TBD for external vendors)		(Site 1) 05/01/08 (Site 2) 08/01/08	
Post Implementation Evaluation Report	TSCER Project Team	200 hours	4 Staff – existing (Business, IT)		08/30/09	
Strategy 10:	International Registration Program (IRP) System Replacement - This current project provides a commercial off-the-shelf product to replace the current system for processing IRP transactions.					Completion Date
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required		Completion Date	
Procure hardware/software vendor	IRP Replacement Project Team	2,742 hours	Staff – existing (Business, IT)		08/14/06	
Design system	DMV CACI, Inc	884 hours	Staff – existing (Business, IT) Vendor Resources		11/13/06	
Test system	Staff Programmer Analyst CACI, Inc	568 hours	1 IT Staff – existing Vendor Resources		06/29/07	
Customize system	DMV CACI, Inc	1,212 hours	Staff – existing (Business, IT) Vendor Resources		08/13/07	
Establish customer satisfaction baseline	MGR III	480 hours	1 Business Staff – existing		08/31/07	

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Train users	CACI, Inc	84 hours	Vendor Resources	09/20/07
Complete system implementation	Staff Programmer Analyst, Deb Murata CACI, Inc.	992 hours	2 IT Staff – existing Vendor Resources	11/19/07
Post implementation customer satisfaction survey	MGR III	272 hours	1 Business Staff – existing	06/08
Evaluation period ending in Post Implementation Evaluation Report	Staff Programmer Analyst, Deb Murata, Linda Stanley	195 hours	2 IT Staff – existing 1 Business Staff – existing	12/17/08
Strategy 11:	Develop, test, and deploy new survey tool for the Customer Survey Program.			
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
Review current Departmental surveys- web based and mail out surveys	Chris Paular, 3 staff from CPD Customer Information Services Section	20 Hours	4 Business Staff – existing	10/06
Meet with division owners of surveys to determine if surveys are meeting needs for performance measurements	Chris Paular, 3 staff from CPD Customer Information Services Section , 9 Divisional Representatives	10 hours	13 Business Staff – existing	01/07
Determine if surveys should be modified, stay the same, or if a new survey should be developed	Chris Paular, 3 staff from CPD Customer Information Services Section , 9 Divisional Representatives	20 Hours	13 Business Staff – existing	02/07
Develop/Deploy survey tool: New/modified/existing. Based upon meetings with divisions	Chris Paular, 3 staff from CPD Customer Information Services Section , 9 Divisional Representatives	40 Hours	13 Business Staff – existing	04/07
Strategy 12:	Allow the submission of Notices of Release of Liabilities (NRL) on the Internet.			
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
Build system	Project ISD Team (5 programmers)	640 hours	5 IT Staff – existing	07/30/06
Test	2 Associate Information Systems Analysts	175 hours	2 IT Staff – existing	08/30/06
Transition to production	5 IT staff	8 hours	5 IT Staff – existing	08/31/06

Strategy 13:		Provide the Change of Address transaction on the Internet.					
Action Plan Step		Responsible Person(s)		Time Frame	Resources Required	Completion Date	
Gather business requirements		Deborah Childs, Daniel Dansby, Richard Kashiwada		256 hours	3 Staff – existing	08/16/06	
Analysis and design		Deborah Childs, Daniel Dansby, Richard Kashiwada		176 hours	3 Staff – existing	08/02/06	
Application development		Paul Bunyan, Steve Cox, David Forkum, Clinton Gordon, David Hurley, Oogie Nguyen, Leila Pereira, Steven Ruport		312 hours	8 Staff – existing	08/25/06	
Application testing		Carrie Chew, Angela Lew, Rachel Machado		312 hours	3 Business Staff – existing	08/25/06	
Implementation		CPD Rep, Media Relations Office, Amber Dow, DTS, Denise Hendricks, Deb Murata		512 hours	6 Staff – existing (Business, IT)	09/01/06	
Strategy 14:		Develop and Implement a Notice of Release of Liability (NRL) Batch process that will allow large user i.e., dealers, to submit a group of NRL documents, via Internet.					
Action Plan Step		Responsible Person(s)		Time Frame	Resources Required	Completion Date	
Develop a Special Project Report		1 MGR III, 1 Associate ISA		1,050 hours	1 Business Staff – existing 1 IT Staff – existing	01/01/07	
Define business rules		Project Leader, 5 project team members		80 hours	6 Business Staff – existing	01/01/07	
Analysis/develop system design		Project ISD Team (3 programmers)		340 hours	3 IT Staff – existing	03/01/07	
Develop system documentation and build system		Project ISD Team (4 programmers)		700 hours	4 IT Staff – existing	05/01/07	
Test system		2 Associate Information Systems Analyst		175 hours	2 IT Staff – existing	06/01/07	
Implement system		5 IT staff		16 hours	5 IT Staff – existing	06/30/07	
Strategy 15:		Advanced Speech Processing – Additional (telephone) Transaction Types and Code Upgrade Project.					
Action Plan Step		Responsible Person(s)		Time Frame	Resources Required	Completion Date	
Procurement - hire Quality Assurance vendor/ hire vendor for project		ASP Project Team		300 hours	6 Staff – existing (Procurements)	03/17/06	
Vehicle Registration Renewal – Design/Develop/Test/Implement		ASP Project Team		624 hours	8 Staff – existing (Business, IT) 7 Consultant/Vendor Staff – new (Total contracts \$116,500)	11/23/06	
Drive Test Appointment - Design/Develop/Test/Implement		ASP Project Team		624 hours	8 Staff – existing (Business, IT) 7 Consultant/Vendor Staff – new (Total contracts \$116,500)	03/05/07	
Complete Post Implementation Evaluation Report		ASP Project Team		200 hours	6 Staff – existing (Business, IT)	09/11/07	

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Strategy 16:	Conduct a small lobby PC pilot to allow customers to do their transaction via the Internet.					
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
	Complete a plan that includes schedule, budget, charter, preliminary design, and success measures	Babette Williams	100 hours	1 Business Staff – existing	09/29/06	
	Develop procedures for lobby help, customer selection and data capture	3 SSAs	100 hours	3 Business Staff – existing	10/20/06	
	Deploy in San Ysidro and South Sacramento field offices	Jan Barney	80 Hours	1 Business Staff – existing	10/25/06	
	Identify 5 additional pilot sites	Jan Barney	40 hours	1 Business Staff – existing	11/30/06	
	Develop Marketing Plan	SSA	40 hours	1 Business Staff – existing	11/30/06	
	Acquire PCs	SSA	40 hours	1 Business Staff – existing	12/31/06	
	Site preparation and PC installation	Staff ISA (FOD staff)	220 hours	1 Business Staff – existing	02/15/07	
	Operate pilot	7 MVFRs	3,528 hrs	7 Business Staff – existing	06/01/07	
	Collect data	7 MVFRs	168 hours	7 Business Staff – existing	06/01/07	
	Prepare monthly reports during pilot	7 MGR Vs	168 hours	7 Business Staff – existing	06/30/07	
	Analyze data and prepare final report with recommendation	Jan Barney	168 hours	1 Business Staff – existing	06/30/07	
	Strategy 17:	Develop and implement a system where customers are 'triaged' regarding the identification of necessary documents prior to starting a process.				
		Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
		Develop project charter, goals, measurements, and plan	Craig Hanson	80 hours	1 Business Staff – existing	10/20/06
		Form a team of regional reps to identify methods for diverting – helping customers	Craig Hanson	40 hours	1 Business Staff – existing	11/01/06
		Develop processes, procedures, forms, and marketing strategy to divert – help customers	9 MGR IVs	720 hours	9 Business Staff – existing	11/17/06
		Develop measures to capture success	AGPA	40 hours	1 Business Staff – existing	11/17/06
		Train field office staff on the new methods	300 MVFRs	600 hours	300 Business Staff – existing	12/31/06
		Deploy and operate the new procedures for a test period of 5 months	169 MVFRs	135,200 hours	169 Business Staff – existing	05/31/07
		Collect data	169 MVFRs	3,380 hours	169 Business Staff – existing	05/31/07
Analyze processes and results of data		AGPA	80 hours	1 Business Staff – existing	06/15/07	
Report results and make recommendations		Craig Hanson	80 hours	1 Business Staff – existing	06/30/07	

Strategy 18:		Utilize a consistent "Customer Service Minute" to close training on Wednesdays.				Completion Date	
Action Plan Step		Responsible Person(s)		Time Frame		Resources Required	
Develop a concept, plan, and schedule for promoting customer service		Babette Williams, Chris Rose		40 hours		2 Business Staff – existing	
Develop process for delivering messages and identify list of memorable customer service quotes		2 MGR III		80 hours		2 Business Staff – existing	
Develop survey to measure the effectiveness of messages		2 MGR III		40 hours		2 Business Staff – existing	
Conduct annual survey on employee knowledge of customer service		2 MGR III		80 hours		2 Business Staff – existing	
Deploy process to field offices and present messages every week (11 months)		169 Field office managers		135 hours		169 Business Staff – existing	
Analyze survey results and make recommendations		2 MGR III		80 hours		2 Business Staff – existing	

FY 2006/07

Strategic Issue:		DMV should continuously focus on its customer service.					
Goal:		Enhance customer service and consumer protection.					
Objective:		Reduce the percentage of consumer complaints against DMV licensed or unlicensed businesses that resulted in a DMV action, by 5%, by June 30, 2007.					
Strategy 1:		Develop and implement a communication plan to improve public awareness of responsibilities of DMV licensed businesses.					

Action Plan Step		Responsible Person(s)		Time Frame		Resources Required		Completion Date	
Identify frequent consumer complaints		AGPA		80 hours		1 Business Staff – existing		11/15/06	
Increase inspection frequencies by 10% in those license categories with highest complaint ratios		Inspectors		300 hours		1 Business Staff – existing		06/30/07	
Establish a communications plan.		AGPA		80 hours		1 Business Staff – existing		12/01/06	
Review current consumer information to expand or develop a new pamphlet		AGPA		80 hours		3 Business Staff – existing		12/01/06	
Identify possible partners for distribution of consumer information		AGPA		80 hours		1 Business Staff – existing		12/01/06	
Print and distribute posters & pamphlets		AGPA		80 hours		Printing Costs		12/15/06	
Add messages to website, answering systems, and queuing systems		1 MGR V (FOD), 1 AISA (CPD) 1 AISA (ISD)		160 hours		2 Business Staff – existing 1 IT Staff – existing		01/30/07	

Department of Motor Vehicles - Action Plan

FY 2006/07						
Strategic Issue:	DMV should continuously focus on its customer service.					
Goal:	Enhance customer service and consumer protection.					
Objective:	Increase the percentage of consumers surveyed who know of the existence of the Car Buyer's Bill of Rights, by 10%, by June 30, 2007.					
Strategy 1:	Develop a communications and marketing campaign to educate consumers about the Car Buyer's Bill of Rights					
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
	Develop a Communications Plan	1 AGPA, 1 AISA	80 hours	2 Business Staff – existing	11/15/06	
	Review current consumer Fast Facts for revisions or develop a new consumer pamphlet(s)	AGPA	80 hours	1 Business Staff – existing	11/15/06	
	Identify partnerships for distribution of consumer information	1 AGPA, 1 AISA	80 hours	2 Business Staff – existing	12/01/06	
	Print and distribute posters and pamphlets	CPD	80 hours	Printing Costs	12/30/06	
	Add messages to websites, answering systems and queuing system	1 AGPA, 1 MGR V 1 AISA	160 hours	2 Business Staff – existing 1 IT Staff – existing	03/07	
Strategy 2:	Survey customers' knowledge of the Car Buyer's Bill of Rights.					
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
	Develop survey questions	1 MGR V, 2 AISA	90 hours	3 Business Staff – existing	11/15/06	
	Distribute surveys	1 MGR V, 2 AISA	80 hours	3 Business Staff – existing	12/01/06	
	Review responses and develop strategies to increase knowledge	1 MGR V, 2 AISA	160 hours	3 Business Staff – existing	01/30/07	

Department of Motor Vehicles - Action Plan

FY 2006/07					
Strategic Issue:	High-risk drivers and uninsured vehicles pose a threat to others.				
Goal:	Reduce the impact posed by high-risk drivers and uninsured vehicles.				
Objective:	Reduce the percentage of vehicle registration suspensions enforced for lack of insurance, by 1%, by June 30, 2007.				
Strategy 1:	Develop and implement a mandatory insurance Marketing Plan.				
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
Research and develop Marketing Plan	Mike Ferguson	40 hours	1 Business Staff – existing	10/15/06	
Implement Marketing Plan as follows:					
Registration card informational insert	Michelle Kumar, Ida Oberlies CPD Translators	400 hours	4 Business Staff – existing	06/06	
Advertise low cost insurance information	LynneMarie Lema	5 hours	1 Business Staff – existing	07/07/06	
Develop Fast Facts for field office and Internet	Michelle Kumar, Ida Oberlies	200 hours	2 Business Staff – existing	08/01/06	
Field office posters	Michelle Kumar, Ida Oberlies	100 hours	2 Business Staff – existing	09/26/06	
Update Financial Responsibility information on DMV Internet	Audry Lee, LynneMarie Lema CPD Web Team	40 hours	4 Business Staff – existing	09/22/06	
Develop Q and A's about SB 1500 Financial Responsibility and put on the Internet	Mike Ferguson, Michelle Kumar	40 hours	2 Business Staff – existing	10/01/06	
Queueing system message for FOD	Jerry Zielinski, Jerry Schroeder CPD Translators	4 hours	4 Business Staff – existing	10/02/06	
Work with CTA and insurance companies to distribute SB 1500 information to their customers	LynneMarie Lema	5 hours	1 Business Staff – existing	11/01/06	
Presentations to insurance agent/broker associations, national insurance associations, CTA, etc.	LynneMarie Lema	80 hours	1 Business Staff – existing	06/06 and ongoing	
Draft and send SB 1500 Implementation Overview sheet to insurance companies and associations	LynneMarie Lema	5 hours	1 Business Staff – existing	08/06	
Media event showcasing SB 1500 (radio, television and newspapers)	Mike Marando, Steve Haskins, Armando Botello, Mike Miller, William Gutierrez, Aubrey Henry, Carol Rohde	48 hours	7 Business Staff – existing	09/26/06	
Media releases, updates, inquiries	Mike Marando, Steve Haskins, Armando Botello, Mike Miller, William Gutierrez, Aubrey Henry, Carol Rohde	200 hours	7 Business Staff – existing	10/01/06 through 06/07	
Include Financial Responsibility information on registration card and renewal notice envelopes	Michelle Kumar	80 hours	1 Business Staff – existing	Next order cycle TBD	

Department of Motor Vehicles - Action Plan

Strategy 2:	PRISM-Assembly Bill (AB) 2736 (enrolled) will authorize the suspension of interstate vehicle registration when the federal Department of Transportation shuts down a carrier operation for safety related violations. The Department will accomplish this through a nationwide network known as the Performance and Registration Information Systems Management (PRISM).				
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
	Collect federal Out-of-Service order baseline data	MGR III	36 hours	1 Business Staff – existing	06/30/07
	System design	Programmer, ISA	1,408 hours	2 IT Staff – existing	06/30/07
	Programming	Staff Programmer Analyst, Programmer	528 hours	2 IT Staff – existing	09/30/07
	Test system	Staff Programmer Analyst, Programmer	176 hours	2 IT Staff – existing	10/31/07
	User testing	Gloria Felder, Connie Price	352 hours	2 Business Staff – existing	12/31/07
	Complete system implementation	Deb Murata, Linda Stanley Programmer, ISA	176 hours	2 Business Staff – existing 2 IT Staff – existing	01/31/08
	Collect/analyze post-implementation federal data	MGR III	36 hours	1 Business Staff – existing	06/30/08
Strategy 3:	Motor Carrier Permit (MCP) Electronic Insurance Project-Under this current project, insurance companies will electronically transmit policy information required for Motor Carrier Permit holders rather than submit documentation. This will simplify the permitting process and lower costs associated with liability and worker's compensation insurance for the participating insurance companies.				
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
	Develop Program Request	Angela Marbray	56 hours	1 Business Staff – existing	09/25/06
	Programming	Darrell Smith, David Holtz	880 hours	2 IT Staff – existing	02/01/07
	Collect baseline data of suspended Motor Carrier Permits	Angela Marbray	52 hours	1 Business Staff – existing	02/01/07
	Testing	Ginny Wagner, Cheri Hightree	80 hours	2 Business Staff – existing	02/16/07
	Implementation	Ginny Wagner, Darrell Smith, Keith Saha	8 hours	1 Business Staff – existing 2 IT Staff – existing	02/23/07
	Collect and analyze post-implementation data	Angela Marbray	16 hours	1 Business Staff – existing	06/30/07

FY 2006/07		High-risk drivers and uninsured vehicles pose a threat to others.			
Strategic Issue:		Reduce the impact posed by high-risk drivers and uninsured vehicles.			
Goal:		Increase the percentage of actions taken against high-risk drivers within established timeframes, by 4%, by June 30, 2007.			
Objective:		Develop and implement a Communication Plan: The plan would help to educate potential high-risk drivers of safe driving practices and the consequences of not following safe driving practices (including redesign of the teen and senior websites).			
Strategy 1:		Development and implementation of a Communication Plan: The plan would help to educate potential high-risk drivers of safe driving practices and the consequences of not following safe driving practices (including redesign of the teen and senior websites).			
Action Plan Step		Responsible Person(s)	Time Frame	Resources Required	Completion Date
Distribute published traffic safety materials to the Driver Safety Offices for public contact presentations		Jacqueline Zeigler	8 hours	1 Business Staff – existing	09/18/06
Develop resource materials on revised time frames for Driver Safety workload processes		Jacqueline Zeigler	16 hours	1 Business Staff – existing	10/31/06
Establish management information tracking system for community outreach presentations		Stacy Cockrum	40 hours	1 Business Staff – existing	10/31/06
Hire a consultant to develop a Communication Plan		Stacy Cockrum, 1 Consultant	16 hours	1 Business Staff – existing 1 Consultant – new (\$40,000 for contract)	10/31/06
Specify driving criteria on DMV website		Susan McBride, Aileen Hidalgo	80 hours	2 Business Staff – existing	11/06
Implement enhanced training to support performance measure objectives		Jacqueline Zeigler, 2 DSM I	240 hours	3 Business Staff – existing	12/01/06
Convert principal Driver Handbook segments to DVD and distribute DVDs		Susan McBride, Letty Fenner, Chris Weinstein	250 hours	3 existing OTS grant staff	12/06
Develop OTS Grant Proposal for Senior Driver Community Outreach Program		DSM I (DS Branch)	80 hours	1 Business Staff – existing	12/31/06
Develop and distribute mature driver tips sheet		Susan McBride, Letty Fenner	80 hours	2 Business Staff – existing	01/07
Implement approved Communication Plan, action items, and strategies		Jacqueline Zeigler, 2 DMS I	300 hours	3 Business Staff – existing	03/31/07
Hire a consultant to redesign teen pages of DMV Website		Susan McBride, Letty Fenner, Chris Weinstein	400 hours	New OTS grant* 3 Business Staff – existing 1 Consultant – new (\$150,000)	03/07
Evaluate management information systems data on percentages of actions against high risk drivers		Stacy Cockrum	8 hours	1 Business Staff – existing	06/01/07
Monthly Program Assessment Reports		Stacy Cockrum	8 hours	1 Business Staff – existing	06/30/07

Department of Motor Vehicles - Action Plan

Update <i>Fast Facts</i> brochures to educate and assist high-risk drivers reduce their chance of injury or death in a motor vehicle collision	Susan McBride, Letty Fenner	80 hours	2 Business Staff – existing	04/07
Media/educational plan to promote Redesigned teen pages	Susan McBride, Letty Fenner, 1 Consultant	400 hours	New OTS grant* 2 Business Staff – existing 1 Consultant – new (\$40,000)	09/07
Strategy 2:	Conduct a 3-Tier Pilot.			
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
Write grant to fund 3-tier pilot & submit to Office of Traffic Safety	Dave DeYoung	80 hours	1 Business Staff – existing	10/01/06
Develop plan to implement 3-tier pilot	Len Marowitz, Dave Hennessy, Suk Brar, Debbie McKenzie	2,000 hours	4 Staff – existing	05/01/07
Develop procedures and training plan for field office staff	Debbie Atkinson, Jenny Meaux, Dave Hennessy	900 hours	3 Staff – existing	05/01/07
Develop educational materials for drivers with limitations	Dave Hennessy	700 hours	1 Staff – existing	05/01/07
Develop research plan to evaluate 3-tier pilot	Robert Hagge, Eric Chapman, Suk Brar	1,800 hours	3 Staff – existing	12/01/07
Collect and organize data from pilot offices	Douglas Luong, Debbie McKenzie	300 hours	2 Staff – existing	07/01/07
Enter data onto electronic spreadsheet	SSA	1,700 hours	1 Staff – existing	07/01/07
Implement 3-tier pilot and evaluation	Robert Hagge, Eric Chapman, Len Marowitz, David Hennessy, Suk Brar, Debbie McKenzie 6 MGR I, 9 MVFR, 10 LRE	8,500 hours	6 Staff – existing 25 Staff – new	07/01/07

FY 2006/07

Strategic Issue: Personal information is a valuable commodity and must be protected.**Goal:** Strengthen validity and security of personal information.**Objective:** Increase the number of DL/ID Cards cancelled for being fraudulent, by 5%, by June 30, 2007.**Strategy 1:** Implement DL/ID card contract.

Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
Evaluate Request for Proposal responses and award contract	Assistant Division Chief/Prgm Mgr, SSM II, 4 SSM I, 2 AGPA, MGR V, 3 MGR III, Staff Counsel III, SISA (Supervisor), SISA (Specialist), SSSI (Technical), SISA (Supervisor), Investigator	11,347 hours	14 Business Staff – existing 4 IT Staff – existing	07/02/07
Develop and obtain Special Project Report approval	Assistant Division Chief/Prgm Mgr, SSM II, 4 SSM I, 2 AGPA, SSSI (Technical), 2 MGR III, SISA (Supervisor)	224 hours	10 Business Staff – existing 2 IT Staff – existing	07/02/07
Design and develop system	Assistant Division Chief/Prgm Mgr, SSM II, MGR II, 2 MGR III, 2 SSM I, SSSI (Technical), 2 SISA, (Supervisor), 2 SISA (Specialist), DPM I, SPA, AGPA	7,567 hours	8 Business Staff – existing 7 IT staff – existing	12/11/07
Conduct testing	Assistant Division Chief/Prgm Mgr, SSM II, MGR II, 2 MGR III, 2 SSM I, SSSI (Technical), 2 SISA (Supervisor), 2 SISA (Specialist), DPM I, SPA, MVT, MVFR	5,121 hours	9 Business Staff – existing 7 IT Staff – existing	02/14/08
Install, train, and implement	Assistant Division Chief/Prgm Mgr, SSM II, MGR II, 2 MGR III, 2 SSM I, 2 SISA (Supervisor), 2 SISA (Specialist), DPM I, SPA, MVT, MVFR	3,676 hours	9 Business Staff – existing 6 IT Staff – existing	05/08/08
Complete Post Implementation Evaluation Report	Assistant Division Chief/Prgm Mgr, SSM II, 5 SSM I, 2 AGPA, MGR II, 4 MGR III, MGR V, Staff Counsel III, SISA (Supervisor), SSSI (Technical), 2 SISA (Supervisor), 3 SISA (Specialist), DPM I, Investigator, SPA, MVFR	556 hours	18 Business Staff – existing 9 IT Staff – existing	04/13/09

Department of Motor Vehicles - Action Plan

FY 2006/07					
Strategic Issue:	Personal information is a valuable commodity and must be protected.				
Goal:	Strengthen validity and security of personal information.				
Objective:	Reduce the number of incidents that involve the security of personal information, by 1 incident, by June 30, 2007.				
Strategy 1:	Review and strengthen policies and procedures regarding access to personal information.				
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date
	Review and update classification policy	Paulette Johnson, Administrative Policy Coordinator, Chiefs of Staff (CoS), Executives	94 hours	11 Business Staff – existing 1 IT Staff – existing Executive Review	03/01/07
	Review and update security incident reporting policy	Paulette Johnson, Administrative Policy Coordinator, CoS, Executives	94 hours	11 Business Staff – existing 1 IT Staff – existing Executive Review	03/01/07
	Review and update access control policy	Paulette Johnson, Information Systems Division, Administrative Policy Coordinator, CoS, Executives	114 hours	11 Business Staff – existing 2 IT Staff – existing Executive Review	04/01/07
	Define, establish, and confirm baseline components	Angela Lew, Investigations, Information Systems and Security Audits, Chief Privacy Officer	108 hours	4 Business Staff – existing	06/30/07
	Conduct outreach and training on information security awareness	Fran Jones	40 hours	1 Business Staff – existing	01/01/07
	Verify existing, and establish as necessary, clear department procedures for reporting possible incidents	IPSO, Investigations	30 hours	2 Business Staff – existing	12/01/06
	Update and distribute Information Security Incident Response Team (ISIRT) Manual	IPSO	12 hours	1 Business Staff – existing	01/01/07 (dependency above)
	Develop recommendations for proactive monitoring and auditing for violations involving personal information	Audits lead Task Force with participants from Investigations, LOD, FOD, CPD, ISD, and other interested divisions	206 hours	Staff – existing	06/01/07

FY 2006/07						
Strategic Issue:		Personal information is a valuable commodity and must be protected.				
Goal:		Strengthen validity and security of personal information.				
Objective:		Increase the percentage of surveyed governmental and commercial entities who rate their confidence in the CA DL/ID card as 'above average' or 'excellent', by 20%, by June 30, 2007.				
Strategy 1:		Develop and implement a marketing plan to increase awareness of CA DL/ID card security features.				
	Action Plan Step	Responsible Person(s)	Time Frame	Resources Required	Completion Date	
	Include marketing details in Driver License/Identification Card Communication Plan	AGPA, SSM I	20 hours	2 Business Staff – existing	12/06	
	Finalize Communication Plan	AGPA, SSM I	10 hours	2 Business Staff – existing	07/07	
	Revise brochures, newsletters, and educational videos	2 AGPA, SSM I	20 hours	3 Business Staff – existing	02/08	
	Update Internet	AISA, SISA, AGPA, SSM I	20 hours	4 Business Staff – existing	04/08	
	Public notification and promote new card security features	AGPA, SSM I	20 hours	2 Business Staff – existing	04/08	
Strategy 2:		Develop and conduct surveys of governmental and commercial entities.				
Action Plan Step	Responsible Person(s)	Time Frame	Resources Required Please indicate whether new or existing	Completion Date		
Develop survey	CEAll, SSMMI, SSMI, AGPA, 3 MGR III	30 hours	7 Business Staff – existing	11/06		
Survey deployment	4 AGPA	10 hours	4 Business Staff – existing	12/06, 12/07, 12/08		
Compile surveys	4 AGPA	10 hours	4 Business Staff – existing	12/31/06, 12/31/07, 12/31/08		
Distribute results	AGPA	5 hours	1 Business Staff – existing	01/07, 01/08, 01/09		

ATTACHMENT #2

RECENT CORRESPONDENCE TO FEDERAL OFFICE OF MANAGEMENT AND BUDGET

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



January 25, 2007

Rob Portman, Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Portman:

Thank you for the opportunity to provide input as part of the Office of Management and Budget's (OMB) review of draft regulations for the REAL ID Act. California has been an active participant in numerous meetings and workshops with the Department of Homeland Security (DHS) on this issue. It has always been our position that the Act presents a unique opportunity to improve a state's driver licensing programs, not only to assist DHS in their efforts to thwart terrorism, but to help us stop identity theft, reduce credit fraud, and better protect the privacy of our residents through improved information security procedures.

The following information highlights our key areas of concern. We trust that much of this will be a restatement of provisions included in the draft regulations package submitted to you by DHS. However, since DHS has been appropriately circumspect about the contents of the package, we believe it is worth underscoring to assure that the California Department of Motor Vehicles (DMV) primary issues are expressed and defined for your consideration.

- The California Legislature meets annually, and this year the last day for policy committees to report bills is July 13, 2007. Similarly, California has an annual budget cycle which requires the budget to be submitted to the Governor no later than June 15, 2007. Since the final regulations are not expected to be released until both of these critical cycles have concluded, we cannot proceed with implementation of the REAL ID Act without the appropriate conforming legislation.
- There are five key electronic verification systems that must be in place before states can reasonably be expected to implement the Act. It appears that not all of these systems will be functionally ready by the May 11, 2008, effective date, thereby impeding California's ability to meet certain functional requirements of the REAL ID Act.
- California estimates that based on a 5-year recertification process, we will need to hire, train and place five hundred (500) new employees in local field offices. A longer conversion, of ten (10) or fifteen (15) years would significantly moderate costs associated with additional personnel resources.

- Privacy protection and security of confidential information is a major concern to California. We expect our Legislature and a wide range of privacy groups to be especially vocal regarding the safeguards they would want to see put in place to protect personal information. The final regulations must adequately address these extremely sensitive issues.
- California estimates it will cost \$100 million a year, or \$500 million over a 5-year period, to implement the REAL ID Act. We have asked, and will continue to ask, how the federal government intends to pay for these substantially high implementation costs.

DMV understands that a period of 30, 45, or 60 days could be allotted to receive feedback from the states once the proposed regulations are issued for public comment. Considering the complexity, magnitude, and significance of these regulations, California strongly recommends that the full 60 days be granted for public comment.

More details regarding each of these key areas of concern are attached to this letter for your information. Please reference the following link: http://www.dmv.ca.gov/about/real_id/real_id.htm for a report that we submitted to the California State Legislature in December 2006, which defines our key REAL ID efforts to date.

I appreciate this opportunity to present these issues for your consideration. California's DMV pledges to work cooperatively with federal agencies to develop reasonable REAL ID Act regulations and to ensure a successful implementation plan.

If you or your staff has any questions, please contact me at your convenience at (916) 657-6941, or Rick Vargas, REAL ID Project Director, at (916) 657-8188.

Sincerely,



GEORGE VALVERDE
Director

Attachment

cc: Barry R. Sedlik, Acting Secretary, Business, Transportation and Housing Agency
Matthew Bettenhausen, Director, California Office of Homeland Security

Unattainable Legislative and Budgetary Timeframes

- **Legislation and Budgets:**

As the regulations are not expected to be released until the latter part of this year, states will have less than one year from the date the final regulations are published to implement the Act (May 11, 2008).

The California Legislature meets annually, and this year the last day for policy committees to report bills is July 13, 2007. Similarly, California has an annual budget cycle which requires the budget to be submitted to the Governor no later than June 15, 2007. DHS' most recent projections for the final regulations indicate that they are not expected to be released until both of these critical cycles have concluded. Therefore, the next opportunity that California has to seek conforming legislation would be during the 2008 legislative session. Based on this timeline, California cannot implement the Act by the May 11, 2008 date.

- **Background and Credit Checks:**

Currently, California conducts criminal history checks on its employees; we are concerned that the regulations will require a more intensive process. Based on the language in the Act, we do not believe that the Department of Homeland Security (DHS) has the authority by regulations to require states to have a criminal history check of their employees, unless those employees are directly involved in the manufacturing or production of driver's license and identification cards. In addition, we see no authority for credit checks. California has employee contracts over the next two years and would need to negotiate with the unions to allow these checks to occur.

Requiring credit checks for these employees is not consistent when similar checks are not required of employees of entities that issue primary identity documents, including birth certificates and immigration documents.

Lack of National Verification Systems and Information Security Safeguards

- **National Verification Database Systems**

The five national verification database systems required by the Act either do not currently exist or need significant enhancements. Two of the systems, the Systematic Alien Verification for Entitlements (SAVE) system and the Social Security Online Verification (SSOLV) system, are used by many states but will require modifications prior to the implementation of the Act. The remaining three databases, the Birth Record Verification System, the U.S. Department of State Passport Verification System, and the Driver License/Identification (DL/ID) Card Verification System, will require full development since these national systems currently do not exist.

CALIFORNIA'S REAL ID IMPLEMENTATION ISSUES
AS PRESENTED TO OMB: January 25, 2007

The states need to understand the specifications related to all information technology (IT) solutions related to implementation of the REAL ID Act (e.g., database development, verification and/or sharing of data) in order to develop the appropriate interfaces. California has concerns about the ownership, governance and funding sources for these electronic systems.

- National DL/ID Card Verification System:

California has participated in a Federation of States (i.e., California, New York, Massachusetts, and Iowa) that recently presented a recommendation to DHS on a national DL/ID verification system with an implementation date of May 11, 2008. The proposal recommended a phased-in approach to the remaining four verification systems by the end of 2010, requested DHS assistance in pursuing other state support for the proposal, and sought federal funding to develop the system. The Federation of States is awaiting a formal response to its proposal from DHS.

The American Association of Motor Vehicle Administrators (AAMVA) is preparing an alternate proposal for DHS that will outline AAMVA's solution to have 4 of the 5 databases ready for connectivity by May 11, 2008. California has concerns with this proposal as the database information for birth certificates will not even be available at that time. Federal Senate Bill 2845 (2004) has specific language as it relates to Health Service Agencies in the maintenance of birth certificate information. That bill has a compliance date of 2010. We must ensure that any of the provisions in the regulations for the REAL ID Act are not in conflict with the laws pertaining to other subject areas.

Implementation and Re-Certification of Existing Drivers

- **Phased-in Approach:**

Acceleration from the states' normal renewal cycles for DL/ID cards will significantly impact the states' infrastructure capacity. For California alone, we would need 10-12 more new facilities and 500 new employees to process DL/ID cards based on the proposed accelerated schedule. A phased-in approach tied to the state's normal renewal cycles minimizes this need. California has a five-year renewal cycle for DL's with the possibility of two consecutive Renewal-by-Mail or by Internet. By requiring a five-year implementation schedule, California would be required to bring in an additional 2.5 million cardholders into our offices each year. By allowing for a 10- or 15-year implementation schedule, the number of applicants required to visit our field offices annually is greatly diminished. The longer implementation cycle mitigates the need for California to address expensive logistical and facility needs in order to accommodate additional workloads.

DMV recommends that the final regulations provide for at least a 10-year, and preferably a 15-year, implementation process. This allows for a more leveled workload, spreading administrative costs over a longer period of time. This would significantly reduce the financial burden to the state, federal government, and the impact on the individual DL/ID cardholders.

- **Identity Document Requirements Adversely Impact Existing Cardholders:**

We believe that the language for the proposed regulations of the REAL ID Act will establish a requirement for specific type(s) of documents that can be used to establish identity. Those acceptable documents appear to be extremely limited.

Prior to 1994, California accepted a variety of documents to establish a person's identity. Documents, such as baptismal certificates and military discharge papers, were accepted since birth certificates may not exist for certain individuals. Since 1994, California has had a legal presence requirement for all original card applicants.¹ The identity document requirements that were established are very similar to those documents suggested for use to comply with the REAL ID Act. The applicants are required to provide an acceptable identity/legal presence document prior to the receipt of a DL/ID card. Based on current information from DHS, all individuals born after 1935 would be required to present identity documents in order to comply with the REAL ID Act. DHS suggested a less stringent requirement for drivers born in 1935 or earlier because this is the date that will be referenced in the soon-to-be released federal regulations that establish a national database of birth records. In fact, California supports raising the exemption threshold to 1945, if the applicant has established a pre-existing record with the state and possesses a verified SSN.

In California, approximately 22 million cardholders, born after 1935, must meet the requirements. California expects that a significant number of current cardholders will not be able to comply. Unfortunately there are many individuals, both new applicants and existing cardholders, who cannot meet these requirements. There are individuals that do not have a U.S. birth certificate or passport although they are U.S. citizens or otherwise legally present. There must be an allowance for exception processing of applicants that were born in a time or place that did not accommodate the issuance of a birth certificate or record. Additionally, there will be some individuals that cannot prove the record of their birth as the records have been destroyed through events like fires or natural disasters.

In addition, the regulations should allow exception processing for new applicants, when the state can establish identity by a document or documents not specifically listed in regulations. If the regulations do not provide any exception process, these applicants would have few choices despite being U.S. citizens or otherwise legally present.

¹ This requirement was limited to original card applicants and exempted those individuals already in possession of a DL/ID card.

- **True Full Name Requirements Must Consider Database Inconsistencies:**

The issue of consistency of true full names stored in DMV, DHS, vital statistics, and SSA databases is problematic. Each state or federal agency adheres to different requirements for establishing an individual's true full name. In cases where an individual intends to use a different name or change his/her legal name on a DL/ID card, without first notifying SSA of the change, the discrepancy is identified during the verification process. California DMV refers the individual to SSA to correct the information with SSA before a driver license or identification card can be issued. DHS does not require individuals to notify them of any subsequent name changes until it is time to change or extend their legal presence status. The process to correct birth records is lengthy and costly to the applicant.

This will cause significant problems for existing cardholders on our database. For instance, an applicant with the name "Bill" has had a DL card in California for the past 20 years. Based on the SSN number provided on the application form, the department was able to positively verify that the name, date of birth, and SSN submitted matches the SSA database information. In 2008 when "Bill" is required to appear with his identity document to comply with the REAL ID Act, we find that "Bill" is actually "William" on his birth certificate. "Bill" does not have any legal name change document as he has always used the nickname and even SSA allowed the use of this nickname. On a strict interpretation of the proposed regulations "Bill" would now be required to go by "William" and he would have to go to SSA in order to update their records to reflect "William." If he does not do this, the SSN provided will not verify with departmental records and a REAL ID compliant card will not be issued.

Due to the number of problems caused by databases containing conflicting name configurations, we propose that applicants that have had a DL/ID card for more than 10 years with a verifiable SSN be "grandfathered" in and not subject these cardholders to the identity document requirements of the Act. Regulations must allow for some variance between the databases. It is unlikely that an exact name match will occur on all three databases: birth certificates, Social Security and the DMV. Instead, the states must ensure that the information on their database matches at least one other agency, such as vital statistics or the Social Security Administration (SSA).

- **Social Security Number (SSN) Discrepancies:**

As written, the REAL ID Act would require states to 'resolve' SSN discrepancies. California contends that applicants should have the responsibility to resolve issues with their SSN. The majority of the states utilize Social Security Administration's Social Security Online Verification (SSOLV) system to verify the validity of an SSN. SSA's current and historical practices allow for discrepancies that cannot be resolved by motor vehicle agencies (e.g., issuing the same SSN to two different persons). DHS has agreed that the responsibility for contacting SSA to resolve SSN discrepancies will fall to the applicant.

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The REAL ID Act refers to pending applications but does not define them nor are they currently verifiable through the SAVE system. DHS stated that pending immigration applications will be accepted only if available for electronic verification through the SAVE system. Since pending applications are not currently loaded into SAVE, DHS must modify its system. Visas will be acceptable only if attached to a foreign Passport and accompanied by a valid immigration document (e.g. I-94).

Privacy and Confidentiality Issues

- **Privacy Protection:**

The Act's mandate for electronic data collection and storage, coupled with the sharing of state DL/ID data among states and their agencies, increases the risk of identify theft. Given the size of these databases and the number of users, information security and privacy and creation of fraudulent identification documents by terrorists and criminals are of paramount concern. Linked databases are more problematic because all data could be exposed from any single insecure point in any of the databases or along the communications pathways that share data.

The Act is silent regarding such critical issues as the principles and methods behind the creation, implementation, and administration of these databases and information-sharing arrangements. It contains no guidance regarding how the shared databases should be secured or how the personal information contained within them should be handled. Further, it does not specify how to hold the administrators and users of these databases accountable for proper use and maintenance. It is imperative that the final regulations address these critical security issues.

Additionally, privacy and confidentiality laws vary from state to state. There could be cases whereby the state law is more restrictive or potentially in conflict with the data collection, use and exchange and verification requirements of REAL ID. States, including California, in this situation must carefully contemplate the consequences of changing their privacy laws.

The final regulations should address these critical issues of privacy and security and provide adequate flexibility that takes into consideration existing state laws, as long as states meet the intent of general privacy and security guidelines issued in the REAL ID regulations. The protection of confidential information is at stake, as well as additional, unidentified REAL ID costs.

- **Access and Use of Data Authority is Unclear:**

We see the electronic DL/ID verification system as an "inquiry" based system that states can utilize to determine where an applicant is/was previously licensed. This database should not allow for "searches" of an individual by outside agencies. In addition, the

REAL ID Act requires states to "Provide electronic access to all other states to information contained in the motor vehicle database of the state," and does not specify which entities within a state are entitled to access or for what reasons. DHS needs to ensure that the regulations specify what specific types of entities can utilize information from this database and for what purposes. There are undoubtedly other local, state, and federal agencies that should not be authorized to access these data, as there is no business need for them to obtain this information.

- **Card Security Features:**

The California Department of Motor Vehicles has serious concerns with the proposed Real ID Act regulations relating to card security and manufacturing. We are concerned with the possibility of rules that will mandate certain card security features and materials, specifically, the use of polycarbonate substrate and the required engraving process. Polycarbonate material has not proven to be more secure than the non-extruded polyester material currently used as base card production material in a majority of the states. Use of polycarbonate material may preclude the use of over-laminates making it easier to alter a card after issuance, and eliminating the valuable security features that are inherent in security laminates such as the prevention of undetected card intrusion. If these rules are adopted, a great financial burden will be placed on states in order to comply. Information from vendors that currently manufacture cards estimate that costs can increase as much as \$3 to \$6 dollars per card. Based on this information, California can expect an increase in card production costs totaling \$250 million dollars over a five-year period. Also, there are only a handful DL/ID vendors that provide these services, it may be impossible for them to change their facilities and manufacturing process nationwide in order for them to comply with the security feature requirements and meet the 2008 deadline.

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- **Display of Residence Address on the Card Face:**

California strongly disagrees with the mandate to put an address of principal residence on the front of the card. We believe that the placement of the residence address in the encrypted 2-D bar code and the ability of databases to communicate the information to law enforcement or other authorized entities meet the needs and intent of the residence address requirement.

There are major privacy and safety risks in showing the residential addresses on the face of DL/ID cards. California has enacted a number of measures designed to provide privacy protection and thwart identity theft. California statutes provide that residence addresses are confidential and cannot be released except under very strictly regulated circumstances. In addition, existing law provides for additional safeguards for those, who because of their employment or domestic circumstances may require special protection. These include law enforcement officers, victims of domestic violence, health care workers, district attorneys, judges, and members of the Legislature.

DL/ID cards have become the primary identification document in the United States and are used to cash checks, enter certain buildings, and conduct numerous other business activities. As a result of this widespread use, it has become imperative for individuals to vigilantly protect their personal information.

Allowing all individuals to use a mailing address on the front of the card while allowing electronic access to residence address information meets the needs of law enforcement, while giving individuals the ability to better maintain the confidentiality of their personal information.

Lack of Federal Funding

Based on a recent survey conducted by the American Association of Motor Vehicle Administrators (AAMVA) in cooperation with the National Governor's Association (NGA) and the National Conference of State Legislatures (NCSL), a total of \$11 billion is needed by the states to implement the provisions of the Act. We estimate that REAL ID implementation costs in California could be at least \$500 million and may include an additional \$250 million depending on the specifics of the final regulations governing card production costs.

Federal funding to the states to support the implementation and ongoing program costs is essential to the successful implementation of REAL ID. To date, \$34 million remains from the original \$40 million authorized for federal grants to all states. The California Legislature appropriated \$18.8 million in fiscal year 2006/2007 for REAL ID planning activities for which DMV has requested federal reimbursement from the \$34 million in grant funds. DHS has recently responded to DMV by stating that they do not have the authority to release the remaining grant monies until they have presented a spending plan to Congress and do not anticipate reimbursing any states for their costs incurred until after the final REAL ID regulations are published.

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



January 26, 2007

Secretary Darryl Williams
United States Department of Homeland Security
Washington, DC 20528

Dear Mr. Williams:

It was truly a pleasure meeting with you at the American Association of Motor Vehicle Administrators (AAMVA) International Board meeting in San Diego earlier this month. Your update on the Department of Homeland Security's (DHS) activities and proposals related to the implementation of the REAL ID Act was very informative.

As I mentioned at the time, California is one of only a handful of states that has participated in a regulations working group led by Jonathan Frenkel of DHS. These meetings, which began in October 2005, have provided an excellent forum through which to share our issues and concerns and we thank the DHS for including us in this deliberative process.

At the AAMVA meeting, you discussed the possibility of a 10-year implementation timeline to re-certify all existing drivers and identification card holders under the REAL ID program. A longer implementation option had been suggested by the states in some of the regulatory working group discussions, but this concept did not seem to be agreeable to DHS. I cannot tell you how encouraging it is to hear that such an extended time line may be possible. A 10-year conversion provides California much more flexibility to work on key implementation issues and to address the large workload increases anticipated under the Act.

Our Legislature has consistently expressed severe reservations regarding the impact the REAL ID Act may have on Californians. Once the full extent of the regulatory requirements are known, the process of developing and enacting necessary conforming state laws will begin in earnest and this will be challenging to say the least. Not only would a 10-year or even 15-year conversion period provide a much better opportunity to reach agreement on key licensing provisions, but it also allows the discussions to continue regarding the critical issue of funding options. Since annual costs could be significantly reduced using a longer conversion period, both the states and the federal government would have much greater latitude if such an accommodation is made.

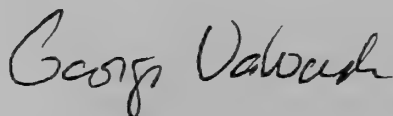
You also mentioned that during the current 90-day period when the regulations are under review by the Office of Management and Budget (OMB), states could submit comments

directly to OMB for their consideration. We certainly wanted to take advantage of that opportunity and have prepared a letter to them dated January 25, 2007, reiterating our primary issues. I have attached a copy of that letter for your information.

Again, thank you for sharing these key pieces of information with me during our meeting in San Diego. I know that we both want to see the REAL ID Act implemented in a reasonable and practical manner. Working together, I know we can meet the significant challenges and that we will achieve this goal.

If I can provide any further information or clarification regarding these matters, please contact me at (916) 657-6941.

Sincerely,

A handwritten signature in black ink that reads "George Valverde". The signature is written in a cursive, flowing style.

GEORGE VALVERDE
Director

Attachment

cc: Barry R. Sedlik, Acting Secretary, Business, Transportation & Housing Agency
Matthew Bettenhausen, Director, California Office of Homeland Security

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



January 25, 2007

Rob Portman, Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Portman:

Thank you for the opportunity to provide input as part of the Office of Management and Budget's (OMB) review of draft regulations for the REAL ID Act. California has been an active participant in numerous meetings and workshops with the Department of Homeland Security (DHS) on this issue. It has always been our position that the Act presents a unique opportunity to improve a state's driver licensing programs, not only to assist DHS in their efforts to thwart terrorism, but to help us stop identity theft, reduce credit fraud, and better protect the privacy of our residents through improved information security procedures.

The following information highlights our key areas of concern. We trust that much of this will be a restatement of provisions included in the draft regulations package submitted to you by DHS. However, since DHS has been appropriately circumspect about the contents of the package, we believe it is worth underscoring to assure that the California Department of Motor Vehicles (DMV) primary issues are expressed and defined for your consideration.

- The California Legislature meets annually, and this year the last day for policy committees to report bills is July 13, 2007. Similarly, California has an annual budget cycle which requires the budget to be submitted to the Governor no later than June 15, 2007. Since the final regulations are not expected to be released until both of these critical cycles have concluded, we cannot proceed with implementation of the REAL ID Act without the appropriate conforming legislation.
- There are five key electronic verification systems that must be in place before states can reasonably be expected to implement the Act. It appears that not all of these systems will be functionally ready by the May 11, 2008, effective date, thereby impeding California's ability to meet certain functional requirements of the REAL ID Act.
- California estimates that based on a 5-year recertification process, we will need to hire, train and place five hundred (500) new employees in local field offices. A longer conversion, of ten (10) or fifteen (15) years would significantly moderate costs associated with additional personnel resources.

- Privacy protection and security of confidential information is a major concern to California. We expect our Legislature and a wide range of privacy groups to be especially vocal regarding the safeguards they would want to see put in place to protect personal information. The final regulations must adequately address these extremely sensitive issues.
- California estimates it will cost \$100 million a year, or \$500 million over a 5-year period, to implement the REAL ID Act. We have asked, and will continue to ask, how the federal government intends to pay for these substantially high implementation costs.

DMV understands that a period of 30, 45, or 60 days could be allotted to receive feedback from the states once the proposed regulations are issued for public comment. Considering the complexity, magnitude, and significance of these regulations, California strongly recommends that the full 60 days be granted for public comment.

More details regarding each of these key areas of concern are attached to this letter for your information. Please reference the following link: http://www.dmv.ca.gov/about/real_id/real_id.htm for a report that we submitted to the California State Legislature in December 2006, which defines our key REAL ID efforts to date.

I appreciate this opportunity to present these issues for your consideration. California's DMV pledges to work cooperatively with federal agencies to develop reasonable REAL ID Act regulations and to ensure a successful implementation plan.

If you or your staff has any questions, please contact me at your convenience at (916) 657-6941, or Rick Vargas, REAL ID Project Director, at (916) 657-8188.

Sincerely,



GEORGE VALVERDE
Director

Attachment

cc: Barry R. Sedlik, Acting Secretary, Business, Transportation and Housing Agency
Matthew Bettenhausen, Director, California Office of Homeland Security

Unattainable Legislative and Budgetary Timeframes

- **Legislation and Budgets:**

As the regulations are not expected to be released until the latter part of this year, states will have less than one year from the date the final regulations are published to implement the Act (May 11, 2008).

The California Legislature meets annually, and this year the last day for policy committees to report bills is July 13, 2007. Similarly, California has an annual budget cycle which requires the budget to be submitted to the Governor no later than June 15, 2007. DHS' most recent projections for the final regulations indicate that they are not expected to be released until both of these critical cycles have concluded. Therefore, the next opportunity that California has to seek conforming legislation would be during the 2008 legislative session. Based on this timeline, California cannot implement the Act by the May 11, 2008 date.

- **Background and Credit Checks:**

Currently, California conducts criminal history checks on its employees; we are concerned that the regulations will require a more intensive process. Based on the language in the Act, we do not believe that the Department of Homeland Security (DHS) has the authority by regulations to require states to have a criminal history check of their employees, unless those employees are directly involved in the manufacturing or production of driver's license and identification cards. In addition, we see no authority for credit checks. California has employee contracts over the next two years and would need to negotiate with the unions to allow these checks to occur.

Requiring credit checks for these employees is not consistent when similar checks are not required of employees of entities that issue primary identity documents, including birth certificates and immigration documents.

Lack of National Verification Systems and Information Security Safeguards

- **National Verification Database Systems**

The five national verification database systems required by the Act either do not currently exist or need significant enhancements. Two of the systems, the Systematic Alien Verification for Entitlements (SAVE) system and the Social Security Online Verification (SSOLV) system, are used by many states but will require modifications prior to the implementation of the Act. The remaining three databases, the Birth Record Verification System, the U.S. Department of State Passport Verification System, and the Driver License/Identification (DL/ID) Card Verification System, will require full development since these national systems currently do not exist.

The states need to understand the specifications related to all information technology (IT) solutions related to implementation of the REAL ID Act (e.g., database development, verification and/or sharing of data) in order to develop the appropriate interfaces. California has concerns about the ownership, governance and funding sources for these electronic systems.

- o National DL/ID Card Verification System:

California has participated in a Federation of States (i.e., California, New York, Massachusetts, and Iowa) that recently presented a recommendation to DHS on a national DL/ID verification system with an implementation date of May 11, 2008. The proposal recommended a phased-in approach to the remaining four verification systems by the end of 2010, requested DHS assistance in pursuing other state support for the proposal, and sought federal funding to develop the system. The Federation of States is awaiting a formal response to its proposal from DHS.

The American Association of Motor Vehicle Administrators (AAMVA) is preparing an alternate proposal for DHS that will outline AAMVA's solution to have 4 of the 5 databases ready for connectivity by May 11, 2008. California has concerns with this proposal as the database information for birth certificates will not even be available at that time. Federal Senate Bill 2845 (2004) has specific language as it relates to Health Service Agencies in the maintenance of birth certificate information. That bill has a compliance date of 2010. We must ensure that any of the provisions in the regulations for the REAL ID Act are not in conflict with the laws pertaining to other subject areas.

Implementation and Re-Certification of Existing Drivers

- **Phased-in Approach:**

Acceleration from the states' normal renewal cycles for DL/ID cards will significantly impact the states' infrastructure capacity. For California alone, we would need 10-12 more new facilities and 500 new employees to process DL/ID cards based on the proposed accelerated schedule. A phased-in approach tied to the state's normal renewal cycles minimizes this need. California has a five-year renewal cycle for DL's with the possibility of two consecutive Renewal-by-Mail or by Internet. By requiring a five-year implementation schedule, California would be required to bring in an additional 2.5 million cardholders into our offices each year. By allowing for a 10- or 15-year implementation schedule, the number of applicants required to visit our field offices annually is greatly diminished. The longer implementation cycle mitigates the need for California to address expensive logistical and facility needs in order to accommodate additional workloads.

DMV recommends that the final regulations provide for at least a 10-year, and preferably a 15-year, implementation process. This allows for a more leveled workload, spreading administrative costs over a longer period of time. This would significantly reduce the financial burden to the state, federal government, and the impact on the individual DL/ID cardholders.

- **Identity Document Requirements Adversely Impact Existing Cardholders:**

We believe that the language for the proposed regulations of the REAL ID Act will establish a requirement for specific type(s) of documents that can be used to establish identity. Those acceptable documents appear to be extremely limited.

Prior to 1994, California accepted a variety of documents to establish a person's identity. Documents, such as baptismal certificates and military discharge papers, were accepted since birth certificates may not exist for certain individuals. Since 1994, California has had a legal presence requirement for all original card applicants.¹ The identity document requirements that were established are very similar to those documents suggested for use to comply with the REAL ID Act. The applicants are required to provide an acceptable identity/legal presence document prior to the receipt of a DL/ID card. Based on current information from DHS, all individuals born after 1935 would be required to present identity documents in order to comply with the REAL ID Act. DHS suggested a less stringent requirement for drivers born in 1935 or earlier because this is the date that will be referenced in the soon-to-be released federal regulations that establish a national database of birth records. In fact, California supports raising the exemption threshold to 1945, if the applicant has established a pre-existing record with the state and possesses a verified SSN.

In California, approximately 22 million cardholders, born after 1935, must meet the requirements. California expects that a significant number of current cardholders will not be able to comply. Unfortunately there are many individuals, both new applicants and existing cardholders, who cannot meet these requirements. There are individuals that do not have a U.S. birth certificate or passport although they are U.S. citizens or otherwise legally present. There must be an allowance for exception processing of applicants that were born in a time or place that did not accommodate the issuance of a birth certificate or record. Additionally, there will be some individuals that cannot prove the record of their birth as the records have been destroyed through events like fires or natural disasters.

In addition, the regulations should allow exception processing for new applicants, when the state can establish identity by a document or documents not specifically listed in regulations. If the regulations do not provide any exception process, these applicants would have few choices despite being U.S. citizens or otherwise legally present.

¹ This requirement was limited to original card applicants and exempted those individuals already in possession of a DL/ID card.

- **True Full Name Requirements Must Consider Database Inconsistencies:**

The issue of consistency of true full names stored in DMV, DHS, vital statistics, and SSA databases is problematic. Each state or federal agency adheres to different requirements for establishing an individual's true full name. In cases where an individual intends to use a different name or change his/her legal name on a DL/ID card, without first notifying SSA of the change, the discrepancy is identified during the verification process. California DMV refers the individual to SSA to correct the information with SSA before a driver license or identification card can be issued. DHS does not require individuals to notify them of any subsequent name changes until it is time to change or extend their legal presence status. The process to correct birth records is lengthy and costly to the applicant.

This will cause significant problems for existing cardholders on our database. For instance, an applicant with the name "Bill" has had a DL card in California for the past 20 years. Based on the SSN number provided on the application form, the department was able to positively verify that the name, date of birth, and SSN submitted matches the SSA database information. In 2008 when "Bill" is required to appear with his identity document to comply with the REAL ID Act, we find that "Bill" is actually "William" on his birth certificate. "Bill" does not have any legal name change document as he has always used the nickname and even SSA allowed the use of this nickname. On a strict interpretation of the proposed regulations "Bill" would now be required to go by "William" and he would have to go to SSA in order to update their records to reflect "William." If he does not do this, the SSN provided will not verify with departmental records and a REAL ID compliant card will not be issued.

Due to the number of problems caused by databases containing conflicting name configurations, we propose that applicants that have had a DL/ID card for more than 10 years with a verifiable SSN be "grandfathered" in and not subject these cardholders to the identity document requirements of the Act. Regulations must allow for some variance between the databases. It is unlikely that an exact name match will occur on all three databases: birth certificates, Social Security and the DMV. Instead, the states must ensure that the information on their database matches at least one other agency, such as vital statistics or the Social Security Administration (SSA).

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Federal funding to the states to support the implementation and ongoing program costs is essential to the successful implementation of REAL ID. To date, \$34 million remains from the original \$40 million authorized for federal grants to all states. The California Legislature appropriated \$18.8 million in fiscal year 2006/2007 for REAL ID planning activities for which DMV has requested federal reimbursement from the \$34 million in grant funds. DHS has recently responded to DMV by stating that they do not have the authority to release the remaining grant monies until they have presented a spending plan to Congress and do not anticipate reimbursing any states for their costs incurred until after the final REAL ID regulations are published.

ATTACHMENT #3

INQUIRY AND RESPONSE REGARDING FEDERAL REIMBURSEMENT- COSTS OF REAL ID ACT

DEC 01 2006

Office of Grants and Training
Preparedness Directorate
Department of Homeland Security
Washington, DC 20531



Homeland
Security

Mr. George Valverde
Director, Department of Motor Vehicles
P.O. Box 932238
Sacramento, CA 94232-3280

Dear Mr. Valverde:

Thank you for your letter of October 13, 2006, seeking reimbursement of expenditures related to the standards prescribed by the REAL ID Act.

The Department of Homeland Security (DHS) did receive an appropriation of \$40 million dollars in the Fiscal Year 2006 Appropriations Act to be used for pilot projects, as well as grants to States pursuant to Section 204(a) of the REAL ID Act of 2005. As a matter of law, monies may not be obligated or allocated for these grants until the Appropriations Committees of the U.S. House of Representatives and the U.S. Senate have received and approved DHS' implementation plan for the responsibilities under the REAL ID Act.

Although DHS has discussed submission of the required implementation plan with both Committees, DHS does not expect to submit its final plan until the internal Federal government work necessary to issue the Notice of Proposed Rulemaking (NPRM) has been completed. DHS intends, however, to submit a plan for Committee approval at the earliest possible time so that States can begin applying for the remaining \$34 million in grant funds.

Given that the final compliance regulations have not been promulgated, it is premature to entertain any reimbursement requests from the States. The Department is committed to establishing a grant program that takes the needs of all states and territories into account.

Thank you again for your letter, and we look forward to a continued partnership on this important national program. If we may be of any further assistance, please feel free to contact the Office of Grants and Training at (202) 786-9430.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew T. Mitchell".

Andrew T. Mitchell
Director of Operations

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



October 13, 2006

Mr. Michael Chertoff, Secretary
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Subject: Request for Grant Funding

Dear Secretary Chertoff:

The California Department of Motor Vehicles (DMV) is formally requesting reimbursement in the amount of \$18.8 million from the U.S. Department of Homeland Security (DHS) Grant Funding Account for expenditures related to the Department's fiscal year 2006/07 REAL ID planning and preparation efforts. This request is being made pursuant to Section 204 of Public Law 109-13, which authorizes the Secretary of DHS to issue grants to a state to assist in conforming to the minimum standards prescribed by REAL ID.

The DMV has initially estimated total costs to the Department for implementing the REAL ID provisions as \$500 million. In recognition and approval of DMV's planning and preparation efforts, the California State Legislature appropriated \$18.8 million to DMV in the 2006/07 fiscal year budget. These funds are for planning activities, information technology programming and infrastructure development necessary to prepare California for the REAL ID federally mandated compliance date of May 2008 and the anticipated federal government regulations. Please see the attached breakdown of the \$18.8 million in costs by expenditure category.

California is aware that \$40 million has been authorized for allocation by the Secretary to states for their costs in implementing REAL ID. To date, \$6 million has been allocated to Kentucky and New Hampshire, leaving a balance of \$34 million. It is California DMV's position that California is eligible for reimbursement from the remaining balance for its planning efforts.

I would like to thank you in advance for your consideration of this matter. If you have any questions, please contact me at (916) 657-6941.

Sincerely,

A handwritten signature in dark ink, appearing to read 'George Valverde'.

GEORGE VALVERDE
Director

Attachment

cc: Sunne Wright McPeak, Secretary, Business, Transportation and Housing Agency
Matthew Bettenhausen, Director, California Office of Homeland Security

California Relay Telephone Service for the deaf or hearing impaired from TDD Phones: 1-800-735-2929, from Voice Phones: 1-800-735-2922

California DMV Planning and Preparation Costs

Fiscal Year 2006/07

1. Establish an organization that is ultimately responsible for all DMV activities related to REAL ID - \$2.6 million.

The Department has developed a REAL ID Organization to prepare for all aspects of policy, program, and project development in anticipation of the REAL ID regulations and implementation. The REAL ID Project Director interfaces with high-level executives within California, at the federal government level, and at national conferences.

2. Implement known components and impacts of REAL ID - \$1 million.

DMV is preparing for the components of the REAL ID that are known through the bill language, such as the requirement to collect, capture, store, and retrieve an expanded true-full-name for each applicant. DMV is addressing this through expansion of the name field, and developing an expandable system test infrastructure. This will:

- Streamline future REAL ID development efforts.
- Position the Department to address the upcoming proposals and system requirements of the REAL ID.
- Enhance security for existing systems and data.

3. Develop enhanced system and system support capacity to effectively implement future provisions of REAL ID as they are known - \$1.2 million.

The age and complexity of DMV's infrastructure limits its ability to comply with known components of REAL ID. DMV must:

- Enhance its IT systems.
- Increase system capacity.
- Expand its facilities in order to be able to accommodate these known requirements.

The Department is performing ongoing analysis of its facilities and infrastructure to ensure the needs of REAL ID can be met and maintained.

4. Prepare California DMV for Change in Workloads - \$14 million.

As a result of discussions with U.S. Department of Homeland Security officials, DMV is anticipating that all current California residents will be required to come into a DMV facility to reenroll and submit the necessary documentation to comply with REAL ID. This will tax existing offices and field office workloads. DMV is proactively working to:

- Prepare a web site infrastructure to move appropriate transactions out of the field offices to the web, thereby freeing up office space and employee time that can be used for the increased customer workload that will occur as a result of REAL ID.
- Utilize the existing web infrastructure and existing processes for business customers and the Internet connectivity used for completing transactions.
- Position DMV for future connectivity needs, as indicated by federal work group discussions.

ATTACHMENT #4

NATIONAL GOVERNORS ASSOCIATION

POLICY STATEMENT ON REAL ID ACT

Real ID

On May 11, 2005, Congress passed the Real ID Act (Real ID) as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (P.L. 109-13), creating national standards for the issuance of state driver's licenses (DLs) and identification cards (IDs). The act establishes certain standards, procedures and requirements that must be met by May 11, 2008 if state-issued DL/IDs are to be accepted as valid identification by the federal government. These standards will alter long-standing state laws, regulations and practices governing the qualifications for and the production and issuance of DL/IDs in every state. They also will require substantial investments by states and the federal government to meet the objectives of the act.

To ensure Congress and the federal government understand the fiscal and operational impact of altering these complex and vital state systems, the American Association of Motor Vehicle Administrators (AAMVA) in conjunction with the National Governors Association (NGA) and the National Conference of State Legislatures (NCSL) conducted a nationwide survey of state motor vehicle agencies (DMVs). Based on the results of that survey, NGA, NCSL and AAMVA concluded that Real ID will cost more than \$11 billion over five years, have a major impact on services to the public and impose unrealistic burdens on states to comply with the act by the May 2008 deadline. Even with full funding and aggressive state implementation plans, the difficulties of complying with yet unpublished regulations by the statutory deadline of May 2008 are insurmountable.

Governors are committed to improving the security and integrity of state DL/ID systems, but the timelines and requirements mandated by REAL ID are unrealistic. In order to meet the objectives of the act, Congress and DHS should at a minimum incorporate the following recommendations into the law and any final regulations:

- **Extend the compliance deadline.**
It will be impossible for states to comply with Real ID by the May 2008 deadline. DHS has yet to issue regulations and most of the major systems necessary to comply do not exist.
- **Provide funds necessary for states to comply with Real ID.**
As this report indicates, the projected cost of complying with the act far exceeds the Congressional Budget Office estimate and will require a more significant investment by Congress.
- **Grant the Secretary of Homeland Security the flexibility to recognize innovation at the state level.**
Several states have updated their systems to meet objectives similar to those of Real ID. The Secretary of Homeland Security should have the discretion to recognize state practices and innovations that accomplish the goals of the act.
- **Implement a 10-year, progressive re-enrollment schedule.**
It is impracticable for states to quickly all 245 million DL/IDs in five years, let alone by the May 2008 deadline. States should be given the flexibility to delay re-verifying certain populations in order to maximize resources and avoid severe disruptions to customer service.

- **Allow reciprocity for persons already vetted by the federal government.**
States could realize significant savings and reduced transaction time if individuals whose identity has already been verified for certain federal identification cards are considered pre-qualified for a Real ID compliant DL/ID.
- **Provide the federal electronic verification systems necessary to comply with the law.**
Only one of the five national electronic systems necessary to effectively verify identification documents is fully operational. It will take considerable time and testing for the federal government to update its systems to meet the information requirements of the act.
- **Require states to employ electronic verification systems only as they become available.**
Until electronic systems are fully operational, states must be allowed to use existing verification processes to comply with the act.
- **Adopt uniform naming conventions to facilitate electronic verification between files.**
An individual's name is a person's most common identifier. For electronic systems to work seamlessly, the federal government must adopt and universally apply common naming conventions to its systems.
- **Establish card security criteria based on performance—not technology.**
Limiting states to a single technology configuration increases risks and reduces innovation.

Real ID presents significant operational and fiscal challenges to states and the federal government and will directly affect individual citizens. Real ID, in its current form, is unworkable. If the law is to serve its intended purpose, DHS should adopt regulations and Congress pass legislation that incorporates governors' recommendations. Only by working together will state and federal governments succeed in meeting the challenges presented by Real ID.

February 23, 2007

STATEMENT

by
Chong-Moon Lee

California Arts Council adopted a Strategic Plan in May of 2006 for a direction of the Council for the next 3 – 5 years to come. Considering the major challenges coming from the continued struggles in shortage of resources, this Plan sets out for the Council as the key guidelines about what to do, when to do and how to do. To operate the Council under the limited resources is the underlying fundamental challenge that the Council faces and this situation will not change any time soon. However, they are again the challenges for us stakeholders to work it out efficiently.

Art Education:

Education is the foundation of knowledge in width and depth of any intellectual endeavor. When it comes to younger generation, developing arts education requires tremendous amount of reading and then imagination comprising writing on own idea in order to logically communicate with oneself as well as with others. Communication and presentation skills are the fundamental bases of the activities of the arts. Reading, writing and composing an idea or imagination have to be based on logical thinking plus well balanced expression skills based on American as well as universal value which the artist intends to create and express. Extensive reading, writing and composing capabilities have to be emphasized in the Art Education.

Arts Activities as a Vehicle for Community Building and Strengthening:

- A) To build bridges among local arts activities, schools, museums and community centers.
- B) To initiate and encourage statewide programs which will work best to the particular locality, highlighting the rather underserved communities as well.
- C) To work with the local elementary/secondary schools, community colleges and adult schools to provide systematically well organized educational programs of arts.
- D) To cultivate and identify the supportive business enterprises and non-profit/charitable organizations with the idea of socially responsible corporation to help community arts activities.

Arts for All Californians:

We can initiate statewide "Arts For All" campaign to educate and enlighten the general public on "Why we need arts", "What arts do to our daily lives" and "What are the benefits of arts", etc.

We Americans are living in a capitalistic environment, which drives us into the free market and free competition systems, and these create a lot of pressures

Senate Rules Committee

FEB 27 2007

1

Appointments

coming from the economic and social uneasiness. People need to be relieved from these daily stresses. They enjoy to read the literatures, listen to the music, appreciate the fine arts or go to the theatre or movie. They are fascinated with the form or style of arts expression of their susceptibilities, raise their consciousness, and get the new interpretation over a divergence in human value and lives, by watching art objects or expressions in facing problems and challenges how these can be presented by the particular art form with joy, sadness, grief, anger or all together. Take the drama for example, through the contents or presentation styles, an audience tend to find himself or herself in a personality in the drama, that is how they get excited, stimulated or are struck with admiration. Even a single piece of fine art works the same way to the people. That is why expression or presentation of arts has to be inspirational to the human hearts. Therefore, arts without this flash of inspiration to human mind do not have a soul. Where there is no soul, there is no art. Our joy and satisfaction touched and ignited by this inspiration of arts are balancing human lives emotionally, psychologically and/or culturally. Art functions and counter-balances between a human as an individual and a human facing in social realism or social positioning, which are occasionally discontented, depressed or pressured. Art purifies human life and encourages and improves the quality of our lives.

CAC shall be the right organization:

- A) To formulate the plan for evangelizing a value of arts as well as encouraging Californians to be involved with art oriented lifestyles, because arts share the ideologies and experiences among people and strengthen the cohesiveness of the communities as well.
- B) To cultivate the future artists and continually help them develop their talents to the global level.
- C) To encourage more multi-cultural art creations, productions, festivals and exhibitions, with participation from the various ethnic groups within California.

Arts for Peace:

Since California is ethnically so much diversified that virtually all cultures, languages, ideologies, religions and various aspects of diversities are represented throughout the State. Our State is one of the best places to initiate a kind of "Arts for Peace" movement. This is a yet another big challenge for us all, because it is a huge task requiring a lot of wisdom, planning and, of course, strong financial backing, too. But I believe someday we will have to address this issue in California. And I see CAC as one of the possible vehicles that can ignite this campaign. We are currently in critically flammable environment globally with the divided religions, and I believe arts and culture are the best areas to try for the reconciliation with the least emotional or religious irritations.

If we agree on the definition of arts as "the world of imagination and communication based on LOVE, DREAM, ROMANCE and HUMANISM, then we

will also be able to agree on the fact that Renaissance had changed the world with arts 600 years ago. We can probably try to replicate it with arts from our own backyard first.

It has been an honor for me to be nominated by the Governor Schwarzenegger as a member of the renowned California Arts Council, and it will be a greater honor and privilege, if confirmed by the Senate, to work with such a professional team of the Council members and the administrative staffs of the Council to advance the State through the arts and creativity.

Thank you very much.

[The following text is extremely faint and illegible due to low contrast and blurring. It appears to be a multi-paragraph document, possibly a letter or a report, with several lines of text visible across the page.]

Carlos Martinez
Statement for California Arts Council

I am honored to have been nominated to serve on the California Arts Council. It is with great enthusiasm and pride that I take on this responsibility to serve my State in creating opportunities so that all Californians can fully participate in the arts. I feel that both my skills and passion for the arts will help the California Arts Council (CAC) move forward in accomplishing its mission as well as develop innovative methods by which art can be appreciated by all citizens of this State.

As the CAC begins implementing a new strategic plan I feel that I can contribute to it in the areas of marketing and art education. My goals for the Council in these areas are twofold. First, I will help craft a marketing/branding campaign that will reach out to all, especially to low-income and rural communities. I will help provide strategic direction on disseminating the information in effective formats so that all Californians are encouraged to participate in the arts. Second, I will help provide input for creating art education opportunities for children and adults. I am very familiar with these type of programs and know of their importance in being linked to the California State Educational Standards so that they are implemented in schools throughout the state.

My longer term goal is to help the CAC transform itself from a funding institution to a leader in the arts. Because funding is scarce, the CAC must use its assets to bring the arts community together and convene forums by which partnerships can be created to tackle issues and create opportunities for the arts to flourish in the State. I am an innovative thinking, problem solver and feel that I can contribute greatly in this area.

I believe that my participation will be a strong voice for arts as well as for communities which are sometimes overlooked: the Central Valley, rural communities and communities of color.

Thank you for your consideration and if appointed I will serve this State with great pride and respect.

Senate Rules Committee

FEB 1 2001

Appointments

Fred C. Sands

February 19, 2007

The Honorable Don Perata
Chairman
Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento, CA 96814-4900

Dear Mr. Perata:

With reference to your February 2, 2007 letter regarding my short and long term goals for the California Arts Council the following are my views:

My short term goal is to make sure that we use at least of 50% of grant monies toward arts in the public schools. There is considerable research indicating that arts education stimulates creativity in children and that children involved in the arts do better in school and that children involved in the arts are less likely to get into trouble. Often trouble starts with boredom. If we stimulate their interest and creativity they will not only do better in school, but they will stay in school and out of trouble.

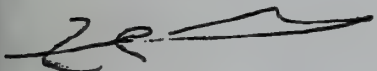
We need to spread the word and increase awareness so that even educators located in the most rural areas are aware of what we do and can make us aware of their needs.

On a long term basis, I would like to see us find other sources of revenue and, if permissible, do some fundraisers in metropolitan areas to generate additional dollars that would go into the arts. Of course, I realize that the State cannot have any liability. Perhaps individual board members like myself could fund the upfront costs. Of course, this would have to be reviewed and approved, to be certain we are not violating any rules or state laws.

I believe we have an obligation to inform Government leaders on a municipal and state level that the arts isn't about rich people. It is something that is worthwhile for kids from all walks of life, living in inner cities, etc.

I am a board member of the Los Angeles Opera and we have free events for inner city kids and it is very gratifying to see low income families with their kids learning what opera is all about. I am a Trustee of the Museum of Contemporary Art and we also do arts programs for inner city kids. All these programs, of course, are without charge as they should be.

Sincerely,



Fred C. Sands

FCS:lp

Senate Rules Committee

FEB 20 2007

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

SUSIE SWATT, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

ANN M. RICHARDSON, Member
California Unemployment Insurance Appeals Board

CAITLIN VEGA
California Labor Federation

LILIAN SHEK, Member
Public Employment Relations Board

TERRI M. CARBAUGH, Member
California Unemployment Insurance Appeals Board

FRANK (FRED) T. AGUIAR, Member
California Unemployment Insurance Appeals Board

ALICE D. PEREZ, Member
Student Aid Commission

1 NANCY ZAREDA, Former Commissioner
Commission on Teacher Credentialing

2 STEVE CALDWELL, Staff
3 Student Aid Commission

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16	HENRY T. PEREA, LAURIE R. SMITH, and	
17	MICHAEL J. SOBEK;	
18	Members of the Fair Employment and	
19	Housing Commission: CAROL R. FREEMAN,	
20	TAMIZA A. HOCKENHULL, and GEORGE WOOLVERTON	
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Well, we have three, actually four, but three delightful appointees here today for the California Unemployment Insurance Appeals Board.

We also have Senator Figueroa here watching us.

We'd like all three of you to come up at one time because the questions will be taken out from a lottery. The Chair can sit in the middle.

They are Fred Frank or is it Frank Fred T. Aguiar, Terri Carbaugh, and Ann Richardson.

Welcome all. I'm sure this is a real treat for you. We only have the room until 2:00, so your answers should be very brief.

[Laughter.]

CHAIRMAN PERATA: Ann, why don't you go ahead and open.

MS. RICHARDSON: My name is Ann Richardson. I've been nominated for Chair of the California Unemployment Insurance Appeals Board.

And I appear before the Rules Committee today. I'm honored to be here, and I'm happy to answer any questions that you may have for me.

CHAIRMAN PERATA: Excellent.

Terri.

MS. CARBAUGH: My name is Terri Carbaugh, and I appear before you today, too, to answer any questions you may have.

1 If I may take a minute, if the Chair would
2 provide, I'd like to acknowledge my family --

3 CHAIRMAN PERATA: Please.

4 MS. CARBAUGH: -- who's here in the audience.

5 My daughter Chelsea is here. She's fifteen. My
6 son Alex is here today too. He is thirteen years old. And my
7 husband Billy Rutland has joined me as well, and I will not
8 state his age.

9 [Laughter.]

10 MS. CARBAUGH: This is the opportunity where we
11 can thank them for supporting us. So, I'd like to do so today.

12 CHAIRMAN PERATA: Thank you.

13 Ann, do you have anyone with you?

14 MS. RICHARDSON: Yes, I do. As a matter of fact,
15 I have my lovely daughter Sheralynn, her handsome husband Jason,
16 my newest son-in-law, our newest addition to the family. My son
17 whom I am very proud of, and my husband, Ron, whom I love very
18 much.

19 AUDIENCE: Awwwww.

20 SENATOR ASHBURN: You've got to top that, Frank.

21 [Laughter.]

22 CHAIRMAN PERATA: You must have thought you were
23 going to get rolled here today.

24 Fred.

25 MR. AGUIAR: Good afternoon, Mr. Chairman and
26 Members. My name is Fred Aguiar. I'm the newest appointee to
27 the board.

28 I have with me today my wife Patty of 39 years.

1 She's in the audience.

2 And it's a real pleasure to be here today. I
3 look forward to the work on the board, and I'd be glad to
4 respond to any questions you might have.

5 CHAIRMAN PERATA: Why don't you just briefly say
6 for the record what it is that you do, because I'll bet you
7 probably half the people here don't know, including me.

8 MS. RICHARDSON: The California Unemployment
9 Insurance Appeals Board is federally funded. Approximately 90
10 percent of our budget comes from the Department of Labor.

11 We're tasked with deciding unemployment insurance
12 cases, tax cases, and disability insurance cases.

13 Also in extraordinary times, such as the citrus
14 freeze, we'll be tasked with hearing disaster unemployment
15 assistance cases. Those will go directly to the Department of
16 Labor for any appeals. They don't come to this appeals board,
17 but we do hear from the field level, we have 12 regional
18 offices, and we do hear those cases on a daily basis and make
19 decisions on those cases on a daily basis.

20 That is essentially what the board's roll is.

21 As Chair of the board, I'm also tasked with
22 dealing with our budget issues, making sure that with our
23 fluctuating workload that we have sufficient staff when there's
24 an increase in casework to cover that casework, and also when
25 there is a decrease in caseload, that we don't have to lay off
26 staff, but that we can roll back our temporary, intermittent,
27 and our retired annuitant staff and maintain a core staff. And
28 that increases morale as well in our agency.

1 We're a very well run agency. And that is in
2 great part due to our Chief Counsel, Ralph Hilton, and our
3 Executive Director J.R. Solana, and many other senior staff that
4 have been there with the agency for 20 years. And it's on their
5 institutional knowledge that I rely greatly.

6 CHAIRMAN PERATA: How many cases typically would
7 you do a day or a week?

8 MS. RICHARDSON: Right now we're in a reduced
9 caseload mode, and I'm doing approximately 15 cases a day. And
10 before that, they've gone up as high as 40 cases a day, which
11 then -- I'm not sure what my fellow members would do, but I
12 would then spread those 40 cases a day out over 7 days because I
13 don't think it's appropriate.

14 CHAIRMAN PERATA: Fred lets Patty do them.

15 MR. AGUIAR: She does a good job.

16 CHAIRMAN PERATA: I know. That's what I thought.
17 Never had a complaint.

18 MS. RICHARDSON: I just want to make sure that
19 I'm giving each one enough -- enough time.

20 SENATOR CEDILLO: It's about the driver's
21 licenses.

22 [Laughter.]

23 MR. AGUIAR: I can't hear you.

24 [Laughter.]

25 SENATOR CEDILLO: With 40 a day, what's the per
26 minute per case?

27 MS. RICHARDSON: You can't -- you can't do the
28 cases that way. And the reason is this.

1 I may get a case where we have no jurisdiction to
2 hear the matter because the appeal was filed late, and that's a
3 subject matter jurisdiction issue. So in that event, that case
4 may take me 10 minutes to decide.

5 We had a mass layoff case, a strike case. That
6 case took me three months to decide. And that was five boxes of
7 transcripts.

8 So, there is no per minute basis for doing cases.
9 And we've been asked that before, but it's really -- it's really
10 impossible, impractical, to try to -- to try to give a per
11 minute assessment to cases. They just -- they're too different.
12 They're too unique. The facts are too different.

13 MS. CARBAUGH: I wonder, if you don't mind, if we
14 could kind of take a look at the agency over all, and how it
15 sort of fits into the National Unemployment Insurance Program in
16 general.

17 If you look at California annually, our average
18 experience is 11 million people become unemployed. And then
19 from that 11 million pool, roughly a little over 3 million will
20 file a claim with the Department of Unemployment -- EDD. And
21 from that, determinations are issued if those individuals will
22 be eligible for either an unemployment compensation payment, for
23 a disability insurance payment, or for paid family leave program
24 benefits.

25 From those determinations, our agency serves to
26 accept appeals should any party feel there was an error in
27 judgment when those determinations were made.

28 And we have a two-level appeal system. We have

1 our 12 field offices, where our administrative law judges serve
2 the public and take the first level set of appeals. They
3 register annually roughly 250 verifications and appeals, and
4 they process those through the system.

5 From the first tier we get on average 6 percent,
6 a little lower today, about 5.7 percent appeals that come before
7 the appellate operation and the board. Then those are the
8 primary responsibility of the board members to review decisions
9 appealed from the field operations.

10 So, that's sort of how the process works. Then
11 maybe we can get into talking about individual board members and
12 the caseload, but I wanted to make sure the Committee was fully
13 apprised of the bigger picture and how things move through the
14 system.

15 CHAIRMAN PERATA: You decide individually on the
16 cases? This is not like an en banc, where you share?

17 MR. AGUIAR: It's random selection, I believe,
18 for the first member, second member, and then for third member
19 opinions requested.

20 MS. RICHARDSON: Additionally, if the case is
21 considered significant enough, any board member can request an
22 en banc hearing. I have done that probably four or five times.

23 CHAIRMAN PERATA: You have 12 field offices?

24 MS. RICHARDSON: Twelve regional offices.

25 CHAIRMAN PERATA: That's probably down from a
26 bigger number before?

27 MS. RICHARDSON: No. We have never had to close
28 any of our regional offices.

1 We do have out stations, and our reason for
2 closing an out station would be that simply the cost of
3 maintaining that out station, the rent, would be insufficient,
4 or it could not satisfy ADA requirements, in which case we've
5 had offices, spaces, loaned to us by EDD.

6 So, we do -- we do try to do an office share if
7 we have to close one of our small out stations, but we have
8 never closed a regional office.

9 CHAIRMAN PERATA: And the staff there is to help
10 the applicant get through the process?

11 MS. RICHARDSON: Both the employer and the
12 applicant come in prior to the hearing, are given a chance to
13 review their file. They're sent material through the mail.
14 That would be the Hearing Information Pamphlet that I attached
15 to the Rules Committee response. And that's their -- that's
16 their first contact with an in-person proceeding, and it's their
17 most significant contact.

18 So, we feel that an in-person process is the best
19 and serves the public the best.

20 CHAIRMAN PERATA: How do you manage the multiple
21 language issues?

22 MS. RICHARDSON: I'm very proud to say we've just
23 received our results from the State Personnel Board survey of
24 the Dymally-Alatorre Bilingual Services Act, and we've met or
25 exceeded all the requirements of that act in the last survey
26 that they performed. And we were commended by SPB for meeting
27 and exceeding those goals.

28 We have approximately 20 interpreters in a

1 variety of languages. We make a determination based on the
2 location of the office, what percent of languages need to be
3 met. We have somebody on staff that is certified as an
4 interpreter at all times to meet the needs of the public.

5 And if, for example, a member of the public comes
6 in, and we do not have anybody on staff that can accommodate
7 them in a foreign language, we have a contract that we're
8 recently trying to renew with a company called Language Line,
9 and we can contact them for any exotic languages, and we can
10 also contact them for the hearing impaired.

11 So again, we have been commended by SPB for
12 meeting and exceeding the requirements of the Dymally-Alatorre
13 Act.

14 CHAIRMAN PERATA: Would you consider Sicilian to
15 be an exotic language?

16 MS. RICHARDSON: Very.

17 [Laughter.]

18 CHAIRMAN PERATA: A civics class is here today.
19 I'd like to introduce, take the privilege of introducing Keith
20 Carson, who is -- are you Chair now, Keith?

21 MR. CARSON [FROM THE AUDIENCE]: No, they kicked
22 me out of there.

23 CHAIRMAN PERATA: Yep. The past Chairman of the
24 Alameda County Board of Supervisors and CSAC. Welcome.

25 And the CAO of the County, Susan Muranishi,
26 welcome. Surprise, but welcome.

27 You look like you are poised to say something.

28 MR. AGUIAR: No, I'm fine.

1 CHAIRMAN PERATA: "Any questions?" Alex? How do
2 you get one of these jobs?

3 [Laughter.]

4 SENATOR PADILLA: I asked for that in private.

5 Actually one question that we did get a chance to
6 talk about, but I wanted to flesh out a bit more here in
7 Committee had to do with what I take is a pending precedent
8 decision for couriers versus independent contractors. You were
9 asked about it in the questionnaire, some of the background
10 information provided to the Committee.

11 I just wondered why there's such a high number of
12 appeals for this category? What you can share in terms of
13 thinking in previous decisions, and what items to consider as
14 this board decision is pending?

15 MS. RICHARDSON: Let me just give you some
16 background.

17 There's an organization who sought to organize
18 employees, traditional employees, who work in the courier
19 industry, and that can be anything from pizza delivery, to
20 FedEx, or a larger company, a courier airline, courier company.

21 And they sought to organize the employees as
22 independent contractors.

23 In the California Unemployment Insurance Appeals
24 law, we have a body of law that governs whether or not employees
25 can be considered independent contractors versus employees. We
26 have several criteria, and then we decide those courier cases
27 based on the criteria that's already precedential in our law.

28 We did have one case that came to the board, one

1 of the initial cases that came to the board that we wrote a very
2 thorough, very comprehensive decision on. And that decision has
3 been put on the agenda for consideration as a precedent
4 decision.

5 But given that the issue is on appeal in the
6 appellate court, and that we had three new members joining our
7 board, we took that off the agenda. We were told that a
8 decision was imminent, and they heard oral arguments on that
9 issue in the last week or so.

10 But I want to be just very clear that with
11 respect to a precedent decision, the court gives deference to
12 it, but it is not controlling. And the decision that we wrote
13 was a very, very good decision that was disseminated throughout
14 our 12 regional offices. It was given to all of our presiding
15 judges to use as instruction for how to handle any courier case
16 that came into the office.

17 And the -- I can provide you with a copy of the
18 decision if you're interested, but there was specific training
19 in each of our regional offices on how to handle that -- that
20 case.

21 My concern in putting it up for a precedent
22 consideration initially was, I was afraid that it would be
23 appealed and perhaps overturned. And I wanted those courier
24 cases to be heard at the field level with the benefit of that
25 decision that we made, and have those cases ruled on with
26 respect to what we had already considered as were important
27 criteria for that industry.

28 So, I just -- I just want the Rules Committee to

1 know that those were very important cases, and we're cognizant
2 of the fact that should the Superior Court give us additional
3 guidance, we will amend our decision, but our goal remains the
4 same, and that is what we stated in our decision that we
5 disseminated to the field, that we find that many of the
6 couriers are in fact employees and not independent contractors.

7 SENATOR PADILLA: I appreciate what you just
8 shared.

9 Given the point you just ended on, that generally
10 speaking, the findings in specific cases tend to be that
11 couriers were in fact employees and not independent contractors,
12 any general themes or consistent patterns that led to your
13 findings and determinations?

14 MS. RICHARDSON: Yes. For example, the routes
15 given to the couriers were given to them by the courier
16 company. They were required to buy trucks, but they had to post
17 their signs on the trucks. They had to post and advertise that
18 particular business on any vehicle they bought.

19 They each morning picked up packages from the
20 same locale, which was the locale of the business owner. The
21 routes were very specific, and they could not deviate from
22 them. If they deviated from them, they would have to -- they
23 were subject to dismissal.

24 So the criteria were very, very specific.

25 [Sound of Cell Phone Ringing in Audience.]

26 SENATOR PADILLA: Thank you for your response.

27 MS. RICHARDSON: I think my husband was calling
28 me. I apologize.

1 [Laughter.]

2 CHAIRMAN PERATA: No, that's okay. I used to
3 teach school. I know what this is like.

4 Any further questions?

5 I want to ask you, I guess you're the appropriate
6 one as Chair, you're now doing digitally recorded?

7 MS. RICHARDSON: Digital recording.

8 CHAIRMAN PERATA: How's that going?

9 MS. RICHARDSON: It's great. We started in one
10 regional office. We rolled it out one office at a time so that
11 the judges could each be trained in how to do it themselves:
12 how to turn on the recorder through their computer; how to set
13 up the mike. And so, we had extensive training, one office at a
14 time, and then we implemented and use the system. And now it's
15 spread throughout our entire system, and everybody is digitally
16 recorded now.

17 The thing that led to digital recording, of
18 course, is lost tapes, broken tapes, malfunctioning equipment.
19 We would have to remand the cases if the tapes were defective.
20 And also, the cost of cassette tapes, which is basically a dying
21 technology, the cost of cassette tapes were \$60,000 a year. So,
22 we were having so many hearings and losing so many quality
23 hearings, and having to remand, that we decided to go into a
24 digital recording system.

25 It's wonderful. And I've invited the staff from
26 the Rules Committee to come over and get a demonstration.

27 We also are providing digital recording
28 demonstrations to other --

1 CHAIRMAN PERATA: The other members of the Board
2 of Supervisors.

3 [Laughter.]

4 MS. RICHARDSON: -- other UI offices in other
5 states. It's better than my phone ringing.

6 [Laughter.]

7 MS. RICHARDSON: But we're very proud of the
8 technology. And that's really one of my goals as the Chair, is
9 to continue modernizing the CUIAB system in such a way that it's
10 user friendly and access is there for the public.

11 CHAIRMAN PERATA: And your staff has an excellent
12 reputation. We've been talking with almost everybody we've
13 confirmed about what's happening, and people getting ready to
14 retire, and having the compaction, and everything else.

15 How are you able to maintain your staff?

16 MS. RICHARDSON: Well, basically it's because
17 it's an agency that people like to work at and stay in.

18 And one of the things that we have, if you start
19 out in CUIAB, we have what's called upward mobility. And
20 that -- and I think other state agencies have it, but we really
21 like to focus outreach on people who are interested in -- when
22 they top out at clerical level jobs, can get additional training
23 through school, and we promote them. They sign up for the
24 program. We promote them. They can cross-train. They can
25 learn other jobs.

26 That's the way we maintain morale, and it's the
27 way we also maintain our staff, and the way they stay with us
28 for years at a time, because they know that we're behind them,

1 that we want them to grow within the agency, and that we're
2 willing to promote them.

3 Another, you know, another thing is that much of
4 our staff is -- is administrative law judges. And I would be
5 remiss if I didn't say they are, without a doubt, the best and
6 the brightest professionals I've had honor of working with in a
7 long time. And I respect them a great deal. They are so good
8 at their jobs, they stay in their jobs. And we want them to
9 stay in their jobs. And so, you know, we have -- we have a
10 wonderful working relationship with them.

11 Many ALJs from other agencies take our ALJ tests
12 when they're offered once every three years. The last time that
13 test was offered, we had a record number of applicants. We had
14 231 people applying to be an ALJ in our agency.

15 So, we're able to recruit and retrain -- and
16 retain because we treat -- treat our staff very well.

17 CHAIRMAN PERATA: Anything to add?

18 MR. AGUIAR: I just met one of the employees this
19 morning. She's not an ALJ, but she's a retired annuitant
20 working at the agency. She retired after 38 years from that
21 agency.

22 CHAIRMAN PERATA: Wow. Pretty impressive.

23 I want to ask you, Fred -- you don't mind if we
24 call you Fred, do you -- about your house. I understand it
25 started out as a small little bungalow, and now --

26 MR. AGUIAR: Mr. Chairman, the County Board is
27 not listening to this.

28 [Laughter.]

1 MR. AGUIAR: We, my wife and I, agreed it was
2 going to be a certain size. And then I went to work in the
3 horseshoe, lost complete control of my life, and it's much
4 bigger now.

5 [Laughter.]

6 CHAIRMAN PERATA: I'm just surprised that you
7 lost control of your life so late in your marriage.

8 [Laughter.]

9 CHAIRMAN PERATA: I mean, many people get that
10 the out of the way early.

11 SENATOR DUTTON: Kind of like the state budget.

12 CHAIRMAN PERATA: Yes, it's kind of like the
13 state budget. Thank you, Bob.

14 [Laughter.]

15 CHAIRMAN PERATA: Anybody here that would like to
16 speak in favor? This is not a command performance. I don't
17 think they're in too much trouble. They could probably get out
18 of here on a split vote, but I wouldn't worry about that.

19 Anybody want to talk? You do. You must have a
20 case pending, do you?

21 [Laughter.]

22 MS. VEGA: I'll be very brief, Mr. Chair and
23 Members of the Committee.

24 Caitlin Vega with the California Labor Federation
25 here to testify in support of Ann Richardson. We believe that
26 her experience and her expertise in this area make her the
27 obvious choice for reappointment, and we really appreciate the
28 work that she's done on this board. We believe she's been an

1 asset to employers and to employees.

2 So, we do urge her confirmation. Thank you.

3 CHAIRMAN PERATA: Anything you want to say about
4 the other guys?

5 [Laughter.]

6 CHAIRMAN PERATA: I think the other two are doing
7 a damn good job, too.

8 Anybody want to speak in opposition? Support?
9 Come on up, please.

10 MS. SHEK: Good afternoon Mr. President and
11 Members of the Senate Rules Committee.

12 My name is Lilian Shek, and it is my pleasure to
13 actually read my recommendation for Chairman Ann Richardson into
14 the record. I submitted a letter. I would just like to briefly
15 read my last paragraph of this letter:

16 "I have complete confidence
17 that Ms. Richardson will rely on
18 her vast knowledge, experience,
19 and integrity to serve the
20 public agencies, employers, and
21 employees within the CUIAB
22 jurisdiction with honesty,
23 commitment and compassion."

24 And I respectfully urge this esteem body to
25 confirm her nomination.

26 CHAIRMAN PERATA: Thank you.

27 There's only two other people here who aren't
28 family. Are either one of you going to come up and speak?

1 SENATOR PADILLA: Move.
2 CHAIRMAN PERATA: We have -- oh, Fred, you're
3 coming back?
4 MR. AGUIAR: To speak in opposition.
5 [Laughter.]
6 CHAIRMAN PERATA: Which might not be against your
7 own best interests.
8 [Laughter.]
9 CHAIRMAN PERATA: We have a motion to approve all
10 three. Please call the roll.
11 SECRETARY WEBB: Cedillo.
12 SENATOR CEDILLO: Aye.
13 SECRETARY WEBB: Cedillo Aye. Dutton.
14 SENATOR DUTTON: Aye.
15 SECRETARY WEBB: Dutton Aye. Padilla.
16 SENATOR PADILLA: Aye.
17 SECRETARY WEBB: Padilla Aye. Ashburn. Perata.
18 CHAIRMAN PERATA: Aye.
19 SECRETARY WEBB: Perata Aye. Four to Zero.
20 CHAIRMAN PERATA: We will keep roll open for Roy.
21 Thank you very much. Congratulations, all of you.
22 MS. RICHARDSON: Thank you.
23 MS. CARBAUGH: Thank you very much.
24 MR. AGUIAR: Thank you.
25 [Thereafter, SENATOR ASHBURN
26 voted Aye, making the final
27 vote 5-0 for confirmation.]
28 CHAIRMAN PERATA: It is not necessary for anybody

1 to stay that doesn't want to. We understand.

2 Alice, would you like to come forward.

3 Do you prefer PER-ez or Per-EZ?

4 MS. PEREZ: PER-ez is fine, thank you.

5 Good afternoon.

6 CHAIRMAN PERATA: Welcome.

7 MS. PEREZ: My name is Alice Perez, and I'm here
8 today as an appointment for the California Student Aid
9 Commission.

10 I have with me my five children in spirit:
11 Shante, DJ, Faustino, Renee, and Antonio. In addition to that,
12 I come with prayers from my mother. Thank you.

13 CHAIRMAN PERATA: You're smart.

14 Go ahead. Anything else you'd like to say, other
15 than you've got a great family?

16 MS. PEREZ: About myself is just the fact that
17 it's an honor for me to be here today. And that I've been
18 serving in the capacity of a commissioner since May, and have
19 been actively engaged with the California Student Aid Commission
20 thus far.

21 You have my answers to my questions.

22 CHAIRMAN PERATA: We do.

23 Given the short time that you've been there, what
24 do you think is biggest unmet need we have in financial aid?

25 MS. PEREZ: I think the biggest -- there's two
26 different sets of opportunities. One is the outreach
27 opportunity that I look at, the potential from the outreach to
28 the students and to their parents. And we have some programs

1 today that do a good job of that, but I think we really need to
2 focus more on grassroots efforts, which we've done some in the
3 past. But I really think if we're looking at reaching the
4 levels of students of minority that we want to, that we really
5 need to do more grassroots efforts.

6 In addition to that, I just think internally
7 within the organization there's a lot of opportunity to automate
8 processes, and by doing so it would actually free up staff's
9 time to focus more on vision and doing the things that we could
10 do better to meet the needs of the students, as opposed to
11 focusing on processes.

12 CHAIRMAN PERATA: We've discussed over the last
13 year or so the interrelationship between what you do and the
14 federal government.

15 Do you have any contact with, or do you push them
16 at all as a board to do better by us?

17 MS. PEREZ: Well, yes and no. I have to be
18 honest with you. Since --

19 CHAIRMAN PERATA: We're not used to that, but go
20 ahead.

21 [Laughter.]

22 MS. PEREZ: Since being active on the board, a
23 lot of our -- I think a lot of our actions have been very
24 reactive. We have not been very proactive. And a lot of it has
25 been either reactive to the BSA audit, or it's also been
26 reactive to things that are coming up from the calendar
27 timeframe that we need to do in a timely manner.

28 It would be great when we get to the point where

1 we can actually be visionary and start looking at things to come
2 in the future.

3 When you talk about influencing, I would say I
4 have had an influence because in one sense, we had a huge dollar
5 amount owed to us from VFA, and we weren't acting on it. And I
6 said, "Send the invoice. Why not? I mean, just send it."

7 And it was kind of like, well, we've asked them
8 for the money.

9 "But did you send the invoice?"

10 And so, they sent the invoice and guess what? A
11 check showed up.

12 CHAIRMAN PERATA: Great idea.

13 Alex.

14 SENATOR PADILLA: Thank you.

15 Two questions. One is, when you were a student
16 at Sac State, I don't know if you received financial aid or not,
17 if you can talk about your experience with the process from that
18 perspective: loans, grants, work study?

19 MS. PEREZ: Actually, when I attended Sac State,
20 I was an adult returning student. But I did -- I graduated from
21 Mission High School in San Francisco. And right out of high
22 school, I did attend San Francisco State University, and I did
23 receive funding at that time as a student.

24 And I have to say, at that time in my life it was
25 a pretty transparent process. I was really geared through it by
26 my counselors at school. I was very fortunate, I think, as a
27 student that I had counselors that thought I had the potential
28 to do that, because not all students are geared along that way.

1 And as a result, they encouraged me to apply, and I did.

2 And I started -- I did two semesters at San
3 Francisco State, and then at that time I decided to wait. And
4 then later on, I returned to school, and I finished at Sac State
5 as an adult student. And at that time I did not receive any
6 type of assistance.

7 SENATOR PADILLA: I'm hoping your early
8 experience helps in your capacity now.

9 MS. PEREZ: Well, my early experience has been,
10 in addition to that, I am the mother of five children. Two of
11 them -- one just graduated from UC Davis. The other one's
12 getting ready to graduate from UC Santa Barbara. And I have one
13 that kind of gets in and out of Sierra College. And I have
14 another one that is really more prone for a vocational type of
15 school. So, we're working through that with him right now.

16 But I understand the need just based on a lot of
17 my passion. And my experience has really been working in the
18 community, and working with children, working to understand what
19 the needs are, and get people to advance themselves.

20 So to me, education's extremely important.

21 SENATOR PADILLA: Then it is clear. You'll never
22 hear anybody disagree with that.

23 It's more what strategies or approaches do we
24 have, not just the amount of resources that we commit, but how
25 to make the information available, eligibility requirements, how
26 to make it easy.

27 MS. PEREZ: In my last job, my last job was a --
28 I had a national role with a financial institution. And my job

1 really focused on targeting multi-cultural segments, making
2 financial services available to them.

3 And one of them was making sure our student loan
4 program was reaching those students, and working from a
5 grassroots level, getting folks to understand how to do the
6 outreach.

7 But in addition to that, understanding how -- you
8 know, make loans available from an eligibility perspective.

9 So, I think I do bring that to the table.

10 SENATOR PADILLA: So, the other question then on
11 that point, and that's a great transition, what metrics or
12 quantitative goals do you personally have in your mind, or can
13 the commission adopt, to work toward, so that we know a year
14 from now, two years from now, five years from now, that we're
15 doing better than we are today when it comes to student
16 assistance?

17 MS. PEREZ: In all honesty, since I've joined the
18 board we've been in a very reactive mode. We have not,
19 unfortunately, been in a proactive mode.

20 That's something that I'm hoping to move forward
21 to, because I think today, based on the number of applications
22 that are actually coming in the door versus the number that we
23 actually approve either for grants or for loans, I think we can
24 do better at that.

25 And is it a matter of putting more dollars?
26 Perhaps, but is it also a matter of revamping the eligibility
27 requirements? That can be it as well.

28 So, I think there is opportunity to do a lot of

1 that.

2 SENATOR PADILLA: Thank you.

3 CHAIRMAN PERATA: Gil.

4 SENATOR CEDILLO: I appreciate your candor, and I
5 appreciate your previous work.

6 I'm interested in how we can, given the support
7 for SB 160 from the University of California and the State
8 University system, the community colleges, many chambers, how we
9 can get the commission to be a little more focused, a little
10 more supportive, a little more affirmative towards this targeted
11 population that everyone seems to think that they should be
12 accessing the resources from the state?

13 MS. PEREZ: Actually, from the limited knowledge
14 that I have thus far of being on the commission of some of the
15 outreach stuff they are doing, they are reaching a lot of the
16 minority population today.

17 Could they do a better job? Always yes.

18 But some of the things they're doing are very
19 grassroots level. And it's actually going on site to where the
20 students are, going on site to where their parents are, also
21 working through radio, which is a huge means of, you know,
22 reaching the population.

23 To me, a lot of it is that hands-on that needs to
24 happen more of. And I think as they look at their strategy,
25 because it's not like they've been doing it for a long period of
26 time, but it's always fine tuning that, and it's always finding
27 better ways to do it. So, learning from the outreach that
28 you've done, but also finding ways to do it better.

1 For me, it's top of mine. And when we have
2 discussions about it, it is something that I'm always bringing
3 to the forefront as far as: have you thought about doing it
4 differently; have we thought about doing it in other ways.

5 SENATOR CEDILLO: My thoughts were more about
6 expanding that role of bringing in the SB 160 or AB 540
7 students, so that we would get the support from the commission.

8 MS. PEREZ: Can you get the support? Absolutely.

9 SENATOR CEDILLO: Great. Thank you.

10 CHAIRMAN PERATA: Anyone here in support? Yes,
11 ma'am.

12
13 MS. ZARENDA: Good afternoon, Mr. Chair and
14 Members of the Committee.

15 My name is Nancy Zarenda. I'm a former educator
16 and former commissioner on the California Commission on Teacher
17 Credentialing.

18 I'm here to support and urge your support of the
19 confirmation of Commissioner Alice Perez, a remarkable leader in
20 the community, and someone whose passion and actions on behalf
21 of youth and adults of all ethnic and linguistic backgrounds
22 is -- is exemplary, and her actions have been numerous.

23 As a youth, Alice made choices to pursue
24 education rather than be pressured by her peers, and her
25 education has led to her record successes. She knows that
26 education is a great equalizer, and she has raised and educated
27 not only her own children, but the son of another family member
28 in need, so she knows that equity and access are critical to

1 success of the education of all children.

2 She is also all about business, and she
3 understands that Californians must have a well educated
4 workforce. And she has a unique claim to fame. She's a
5 business person and has business acumen. She is the former
6 Chair of the Sacramento Hispanic Chamber of Commerce, and she is
7 the Chair-elect of the Asian Chamber of Commerce.

8 So, she brings to the table a unique set of
9 skills and resources. She is about improving education
10 opportunities for all students, as she has mentioned.

11 I respectfully urge your support. Thank you.

12 CHAIRMAN PERATA: Thank you.

13 Yes, sir.

14 MR. CALDWELL: Thank you.

15 Very briefly, I'm Steve Caldwell. I work on
16 staff at the Student Aid Commission.

17 I just wanted to say that Commissioner Perez has
18 been an excellent member of the commission as her term has
19 progressed here. She's only missed one meeting. She's been
20 very engaged in the -- in the process.

21 And the other thing that she brings to the table,
22 and I think you heard an example of this already with the money
23 that we asked for from the federal government, she just has this
24 ability to bring the conversation back down to earth. And I
25 think that's one of the things that we really need at the
26 commission right now.

27 We have a mission. We have a job to do. And
28 Commissioner Perez has been very good at keeping people focused

1 on that.

2 So, as staff I appreciate that. And we can move
3 forward in that manner.

4 CHAIRMAN PERATA: Thank you.

5 Further?

6 Would you like to sum up?

7 MS. PEREZ: I just think for me, the important
8 thing is that -- I think from the commission perspective, having
9 been there, I know there's been a lot of transition. There's
10 been a lot of challenges on the Student Aid Commission.

11 I just think to have people that are committed to
12 the cause is extremely important, but to have people actively
13 engaged is extremely important, and to people that are -- to
14 have people that are passionate is important. And I think I
15 represent all three of those.

16 CHAIRMAN PERATA: Thank you. I'm sure you do.

17 Opposition? None.

18 SENATOR DUTTON: I'll move approval.

19 CHAIRMAN PERATA: We have a motion to approve.
20 Please call the roll.

21 SECRETARY WEBB: Cedillo.

22 SENATOR CEDILLO: Aye.

23 SECRETARY WEBB: Cedillo Aye. Dutton.

24 SENATOR DUTTON: Aye.

25 SECRETARY WEBB: Dutton Aye. Padilla.

26 SENATOR PADILLA: Aye.

27 SECRETARY WEBB: Padilla Aye. Ashburn. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Four to Zero.

2 CHAIRMAN PERATA: Four Ayes and one temporarily
3 out of the room.

4 Congratulations.

5 MS. PEREZ: Thank you.

6 [Thereafter, SENATOR ASHBURN

7 voted Aye, making the final

8 vote 5-0 for confirmation.]

9 [Thereupon this portion of the

10 Senate Rules Committee hearing

11 was terminated at approximately

12 2:14 P.M.]

13 --ooOoo--

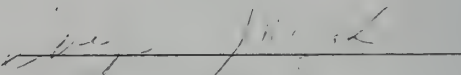
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of March, 2007.


EVELYN J. MIZAK
Shorthand Reporter

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APPENDIX



STATE OF CALIFORNIA - GOVERNOR ARNOLD SCHWARZENEGGER
LABOR AND WORKFORCE DEVELOPMENT AGENCY
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

2400 Venture Oaks Way, Suite 300

Post Office Box 944275

Sacramento, CA 94244-2750

Phone: (916) 263-6783

Fax: (916) 263-6836

Senate Rules Committee

March 21, 2007

March 21, 2007

Appointments

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Attn: Nettie Sabelhaus, Rules Committee Appointments Director

Dear ~~Don~~ Senator Perata:

Thank you for providing me the opportunity to share some of my views regarding the California Unemployment Insurance Appeals Board. I look forward to the confirmation hearing on March 28, 2007 and would be happy to provide you and the Committee with any additional information requested.

1. Please provide us with a statement of your goals. What do you hope to accomplish during your tenure as a member of the board?

My primary goal is to review and decide the cases assigned to me in a timely, fair and impartial manner. I also intend to participate in the administration of the appeals process of the agency. In addition, I plan to provide guidance to the employer and claimant communities by identifying issues and considering the most significant cases for adoption as precedent decisions to become part of a controlling body of administrative law.

2. What do you view as your major responsibilities as a board member?

My major responsibility as a board member requires that I consider and decide cases assigned to me diligently and without prejudice. I will carefully review the administrative record in the cases under appeal, and will render prompt decisions in accordance with the applicable laws.

I also plan to be an active participant during board meetings, engaging myself with staff, working on policy and operational issues that confront the board.

What training did you receive prior to assuming these responsibilities?

I did not receive any specific training prior to my appointment. However, the board does have a training program for all new members.

The training covers both substantive and procedural areas of the law, as well as, the ethical training required for all board members. As the newest member, I have covered most, but not quite all, of the specific subject areas administered by the CUIAB.

In substantive law, I have received training in unemployment insurance law in the areas of benefit payments after a separation from employment, the requirements for claimant to be able and available to work, the proper claim filing procedures, and the effect of partial employment on benefit receipts. These and other sections of the law encompass about 95% of the unemployment cases heard by the CUIAB. The remaining areas of my training, such as benefits for school employees and benefits for those in state-approved training programs, are scheduled to be completed within the next month. Currently my caseload reflects only those areas in which I have been trained.

In addition to unemployment law, I have received training in the law concerning the payment of state disability benefits, such as the requirements for certification of a disability, the timelines under which disability is paid, and the role of the state independent medical examiner in continuing benefits.

The training also covers agency procedures regarding how cases come before the board. This procedural training also includes the basis of review of the administrative law judge' decision and whether that decision is supported by the evidentiary record of testimony and exhibits.

What ethics training did you receive?

The Chief Counsel has provided ethics training material on the California Code of Judicial Ethics and the Board's Incompatible Activities Statement. In addition, I also have completed the state mandated course titled, "Ethics Orientation for State Officials." This training is critical, as our legal system is based upon the principle that independent, fair and competent board members will interpret and apply the governing laws. Board members must respect and honor their office as a public trust and strive to enhance and maintain confidence in our legal system and in the California Unemployment Insurance Appeals Board.

3. What major administrative and policy issues are currently facing the board?

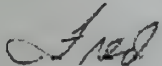
Currently, the major administrative issue facing the board is a projected drop in workload for the current and upcoming fiscal year. Because the board's budget is workload driven, the projected decrease in workload means that our revenues will also diminish. In light of these dynamics, the board will need to ensure that its staffing levels are adequate for its workload. Accordingly, the board will need to maintain a core of permanent, full time staff, augmented by temporary staff to manage the fluctuations in workload while continuing to provide prompt and accurate decisions. From a policy perspective, the challenge will be to continue to provide in person interviews which from a quality control perspective have proven to provide the best service in the face of workload fluctuations and budgetary challenges.

Do you have any suggestions for improving the boards operations?

Because I was just recently appointed, I have not had the opportunity to fully grasp the complexities of the board's day-to-day operations. At this time, I plan to provide guidance and support to my fellow board members and to agency staff to help maintain the board's high level of accessible and quality services to the employer and claimant communities.

Again, I hope these responses are helpful. I am available to discuss any of these issues further with you and the Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred".

FRED AGUIAR

[The body of the page contains extremely faint, illegible text, likely bleed-through from the reverse side of the paper. The text is organized into several paragraphs and possibly a list or table, but the characters are too light to transcribe accurately.]



STATE OF CALIFORNIA - GOVERNOR ARNOLD SCHWARZENEGGER
LABOR AND WORKFORCE DEVELOPMENT AGENCY
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

2400 Venture Oaks Way, Suite 300

Post Office Box 944275

Sacramento, CA 94244-2750

Phone: (916) 263-6783

Fax: (916) 263-6836

March 20, 2007

The Honorable Don Perata
Chair, Senate Rules Committee
California State Senate
State Capitol, Room 420
Sacramento, CA 95814
Attn: Nettie Sabelhaus, Appointments Director

Re: March 28, 2007 Confirmation Hearing

Dear Senator Perata:

Thank you for taking the time to notify me of the upcoming Senate Rules Committee confirmation hearing on my appointment as a member of the California Unemployment Insurance Appeals Board. Pursuant to your request the following are the written responses to the questions outlined in your letter.

Also enclosed is a copy of my updated Form 700.

1. Please provide us with a statement of your goals. What do you hope to accomplish during your tenure as a member of the board?

I hope to enhance public confidence in the California Unemployment Insurance Appeals Board (CUIAB) through the issuance of fair and thoughtful decisions. These decisions will assure all parties the facts of their case were thoroughly considered, regardless of the final resolution.

I plan to be successful in this mission, which in turn will benefit thousands of users of this administrative process.

2. What do you view as your major responsibilities as a board member?

A major responsibility as a board member encompasses deciding my assigned cases diligently and competently. It is my responsibility to provide due process of law by carefully reviewing the administrative records under appeal and considering the arguments for and against the appeals and to render decisions that are clear and concise and in accordance with case, statutory and precedent law.

Senate Rules Committee

MAR 21 2007

Appointments

What training did you receive prior to assuming these responsibilities?

I bring to the board experience as a lay person who has been in the workforce for more than 30 years, holding my first job at the age of 15 ½. My life experience has enabled me to relate to and understand the challenges facing those persons who employ workers and persons who become disabled or unemployed through no fault of their own.

The CUIAB provided me training that began with an overview of the agency and its function, and a brief overview of the Employment Development Department (EDD) and how its determinations generate CUIAB's workload. From that point, specific training was provided in the following areas.

The first area is in the substantive law that the agency administers, found in the Unemployment Insurance Code. The statutes set forth the conditions under which unemployment insurance benefits and disability insurance benefits are payable to claimants and the circumstances that govern the obligations of an employer when a claim is filed.

The second area of training is in legal procedure, that is, the way in which any particular case is heard by an administrative law judge (ALJ) in the field and the way that decision is then appealed to the board itself. A key question to be asked by the board in reviewing an ALJ's decision is whether that decision is supported by the evidentiary record of testimony and exhibits.

What ethics training did you receive?

As required by law, I completed a course titled "Ethics Orientation for State Officials." Further, the Chief Counsel and his staff provided me with training specific to the CUIAB, including the Incompatible Activity Statement and the California Code of Judicial Ethics. This component of the training is germane because the CUIAB system is based upon the principle that independent, fair and competent board members will interpret and apply the laws that govern the unemployment insurance appeals process.

3. What major administrative and policy issues are currently facing the board?

The major administrative issue facing the board at present pertains to managing our resources as efficiently as possible to meet the demands of our workload. This requires us to maintain a core of permanent, full time judges and support staff and augment them with intermittent and retired annuitants as the workload fluctuates.

In light of diminishing resources, the major policy issue facing the board is to maintain our practice of providing in-person, evening and weekend hearings. As decisions are

made on where to allocate our resources we will need to be mindful of our commitment to the public.

Do you have any suggestions for improving the board's operations?

I have been in discussion with our technical staff to identify ways to further improve our ability to deliver information and services to the public, especially through the internet. I am in continued conversations with members of our information technology staff as they endeavor to modernize CUIAB's website and to make it more accessible and user friendly to the public. Work has also begun digitizing the board's precedent decisions which will add word based searches to our homepage and greatly simplify for users the process of conducting research on the precedents.

4. What impact does a drop in workload have on board staffing?

The impact as a result of a drop in workload is a cut back on temporary staff levels, such as retired annuitants. I commend the CUIAB management team for having the foresight and creativity to manage limited resources in times of fluctuating workloads while maintaining timely and quality service to the public.

5. What factors do you believe attributed to a lower number of appeals?

There could be a multitude of reasons for the drop in appeals from determinations issued by the EDD. An improved economy and lower unemployment rates may be significant factors contributing to this drop in lower level appeals.

Factors contributing to the drop in second level appeals to 5.7 percent at the appellate level for the second half of 2006 are not known at this point in time. I learned of this drop in appeals during a recent board meeting and will monitor this rate to determine if it is a short-term change or a sustained trend. It is my hope the drop in second level appeals is because users of the system feel they were treated fairly during the first level appeal hearing. CUIAB field judges have received training on procedural due process and the U.S. Department of Labor administers a program for measuring the quality of unemployment insurance administrative law judge hearings and decisions. During the past year, CUIAB's quality review scores had improved nearly 9 percent. If this drop in appeals becomes a sustained trend, the board may want to ascertain the possible causes and remedies, if appropriate.

Thank you again for taking the time to communicate with me and to obtain answers to questions you may have about my ability to serve as a member of the California Unemployment Insurance Appeals Board. Should you have any questions regarding my responses to your questions outlined above, do not hesitate to contact me at 916-801-8300.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terri M. Carbaugh". The signature is fluid and extends across the width of the text area below it.

Terri M. Carbaugh, Member
California Unemployment Insurance Appeals Board



STATE OF CALIFORNIA - GOVERNOR ARNOLD SCHWARZENEGGER
LABOR AND WORKFORCE DEVELOPMENT AGENCY
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

Office of the Chair
2400 Venture Oaks Way, Suite 300
Post Office Box 944275
Sacramento, CA 94244-2750
Phone: (916) 263-6783
Fax: (916) 263-6842

Committee

2007

March 22, 2007

Appointments

The Honorable Don Perata, President pro Tem
Chair, Senate Rules Committee
California State Senate
State Capitol, Room 420
Sacramento, CA 95814
Attn: Nettie Sabelhaus, Rules Committee Appointments Director

Re: March 28, 2007 Confirmation Hearing of Ann M. Richardson

Dear Senator Perata:

Thank you for your letter of March 9, 2007, wherein you advised me that the Senate Rules Committee will be holding a hearing for my potential confirmation as Chair of the California Unemployment Insurance Appeals Board. I welcome this opportunity to respond to your written questions, and I look forward to appearing before the committee. My responses to your questions are set forth below, and I have attached the requested documents as well as an updated copy of my Form 700.

My responses to the Rules Committee questions are as follows:

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as Chair of the Board?

My number one priority has been and remains providing streamlined, economic, and efficient services to the users of the California Unemployment Insurance Appeals process. As an administrative agency, the California Unemployment Insurance Appeals Board (CUIAB, or Board) must provide a public service that meets the needs of all Californians. I intend to ensure that our process is user friendly, that our documents are clear and easily comprehended, and that all parties feel that they have received a fair hearing. All participants should feel that they have been treated with dignity and respect. The Board has an excellent reputation as a state agency and I intend to continue that reputation by:

- Continuing in-person hearings for parties at convenient locations throughout the State. Our hearings are usually the first time a party has had an opportunity to deal with someone in the process on an in-person basis, and our experience has shown high levels of satisfaction with the

process, win or lose, when the parties feel they have been given a fair opportunity to present their position at an in-person proceeding.

- Providing quality language interpretations for parties requesting assistance in a variety of languages which reflect the diversity of the California employee and employer populations;
- Ensuring that our facilities are easily accessible and accommodating to all persons;
- Providing continuing education and training for judges and all employees in order to assure quality public service;
- Reviewing all documents that are to sent to parties to ensure they are clear, concise and intelligible (See attached copy of our old version of CUIAB's "Hearing Information Pamphlet" and a copy of our newly revised "Hearing Information Pamphlet" that will be distributed starting next month);
- Being prepared for unusual increases in claims, such as we anticipate with the recent citrus freeze or in the case of mass layoffs or strikes. Our office is currently taking steps to set up processes and training for special handling of citrus freeze claims;
- Continuing the multi-level management of the Agency as it exists now to ensure that we do not lose the institutional knowledge we have gained, and in order to provide rank and file continuity of leadership and future successes as an agency;
- Emphasizing our "Upward Mobility" program and providing outreach to employees in CUIAB to take advantage of this resource;
- Investigating and implementing the use of paperless files for purposes of cost efficiency, conservation, and easier access by the parties;
- Providing continuing education for Board Members so that they are kept abreast of changes in the law that may affect our decision-making on cases;
- Continuing to adopt precedent decisions where those decisions will provide guidance to the field judges and uniformity of decision-making for use in our UI, disability and tax cases in California;
- Continuing to hold Board meetings to permit the public to comment on how we can better serve Californians more effectively and efficiently;
- Seeking guidance from CUIAB personnel to take advantage of their expertise in the operational and budget matters of CUIAB, and working to become as informed as possible in order to contribute to the leadership of the agency;
- Assisting other States during emergencies such as Hurricane Katrina and flooding in Mississippi. We regularly help train ALJs and hearing officers in other states.
- Maintaining high employee morale by providing opportunities for staff to promote and transfer within CUIAB;

- Being prepared through training of judges and staff for an increase in Family Temporary Disability Cases as more employers provide leave to families with ill family members, elderly parents and new parents who require leave for bonding.

2. What major administrative and policy issues are currently facing the Board?

The major administrative issue facing the Board at present is the drop in workload. The Board's federal funding is workload driven, which means our available resources are diminished. Thus, the challenge facing the Board is to balance the workload with the appropriate level of staffing necessary to liquidate the workload in a timely fashion without sacrificing quality.

The policy issue relates to the workload issue in that it is CUIAB's policy to maintain a high level of accessibility and points of services to the public regardless of the budget resources available. This requires us to manage our resources efficiently and in a manner that enables us to maintain our commitment to conduct hearings in-person rather than by telephone, and to offer other accessible services such as mass calendars, weekend and evening hearings.

We will meet these administrative and policy issues by maintaining a core of permanent, fulltime ALJs and support staff, and supplementing them with permanent intermittent and retired annuitant employees to meet workload fluctuations. Currently we have instituted a general freeze and are filling critical vacancies only on a case-by-case basis. We restrict the use of retired annuitants and the use of intermittent temporary staff to prevent overstaffing, and also restrict overtime. Additionally, inasmuch as public service remains the paramount goal, we are not intending to close any of our regional facilities. Managing our resources thoughtfully and with foresight enables us to provide the parties with the best service possible while at the same time maintaining our staff and providing security to our employees.

3. What do you view as your major responsibilities as Chair? How does that role differ from the role of a Board member? Did you receive any management training prior to assuming this role?

The major responsibilities of the Chair are to assign cases, to schedule Board meetings, to stay abreast of significant CUIAB issues, and to bring important matters before the entire Board. Those responsibilities are in addition to the duties of all Board members, whose duties are to decide cases on appeal before the Board, and to vote on matters brought to the Board at public Board meetings. In order to enable me to perform the duties of the Chair, I attend weekly policy

meetings, budget briefings, appellate judge trainings, visit offices, and attend quarterly Presiding Law Judge meetings. Although not specifically related to my position as Chair, as an attorney member of the Board, I help fulfill the mandate of the Unemployment Insurance Code's statutory requirement that two attorneys out of the seven-member Board be appointed to serve on the Board. My training as an attorney has helped me with understanding complex issues such as the Family Temporary Disability Insurance Act, also known as the Paid Family Leave Act.

The management training I have received has been in the form of on-the-job training, first as manager of private law offices, as Chief Deputy Legislative Secretary in the Davis Administration, and later as Vice Chair of the CUIAB for two years prior to my appointment as Chair.

4. Please provide the committee with the Board's statement of incompatible activities and/or code of ethics. Did you receive ethics training for this position?

Yes. I have received and completed the ethics training required of state officials under the Government Code (11146.1), and provided through the Office of the Attorney General and the Fair Political Practices Commission on line. In addition, I have also studied ethics materials relating specifically to the Board, as provided to me by agency staff. Attached is a copy of the Board's statement of incompatible activities. The Board has adopted by reference the Administrative Adjudication Code of Ethics, as set forth at Government Code section 11475, et al. In addition, the Board has adopted its own regulation relating to ex parte communications, 22 CCR 5110, attached.

5. Please explain your understanding of a Board member's legal and ethical obligations with respect to communications with interested parties regarding an issue before the Board.

It is my understanding that there shall be no communication with a party, or an interested party, regarding any issue in a proceeding pending before the Board, unless there is notice and opportunity for all parties to participate in the communication. An issue is considered to be pending from the date of appeal until the date of decision. Matters of procedure or practice are excluded from this prohibition.

6. What impact does a drop in workload have on Board staffing?

A drop in workload means less funding for the operations of the Board, since most of our budget comes from the federal government on the basis of the number of appeals we dispose of each year. The impact is to require a reduction in our expenditures, including some staff costs. Most of the reduction

in staff costs is absorbed by giving our intermittent staff and retired annuitants fewer hours. It is critical that we retain our permanent workforce in order to be ready for an inevitable upturn in the number of appeals.

Thus, we would not decrease the permanent CUIAB staff, as it is costly and time consuming to recruit and retrain new staff. However, we are prepared should an increase in claims materialize, but in the meantime we have implemented a freeze on new hires and a freeze on overtime pay.

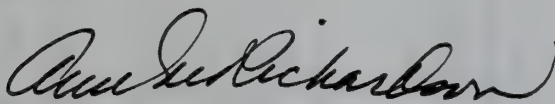
7. What factors do you believe contributed to a lower number of appeals?

At this time we do not have any information that would allow us to even guess as to the reason for the change in appeal rates. Historically, the average rate of appeals has fluctuated around 6%. Information about the drop in the appeal rate came to us only recently, as reported by staff at a board meeting. I have asked staff to provide us with the appeal rates in prior years in order to give some historical perspective to this matter. We will analyze the available data, and if it appears there is any significance to this change in appeal rate, we will ask staff to make appropriate recommendations. Additionally, we will track this trend over time and see if this falls into a normal bell curve distribution.

It is my sincere hope that the decrease in appeals is attributable to a steady increase in our Quality Review scores as provided us by the DOL. When I joined the Board in November 2003, our Quality Review score was averaging 59 (80 was passing) and CUIAB was subject to corrective action plan by DOL. Our latest Quality Review score is 83.7% which is remarkable for a UI Agency as large as California. We have the most claims of any State in the nation, yet we meet and occasionally exceed the DOL standards.

I am very proud of this success which is due in large part to the quality training being provided by our Judges and managers who control our case processing. I intend to ensure our Quality Review scores continue to meet or exceed DOL standards. We must continually strive to meet the expectations of the Californians who use the CUIAB administrative adjudication process to resolve their disputes. If the CUIAB is not user friendly then we are not doing our job. I intend to ensure that CUIAB and I serve the public with all due diligence.

Sincerely,



ANN M. RICHARDSON, Chair

You may request a notice to attend and produce or a subpoena duces tecum by providing the following information to the Office of Appeals:

1. The hearing date and the case number or claimant's social security number.
2. The name of the person who has the documents.
3. A specific description of the documents requested.
4. A statement that the person possesses or controls the documents.
5. Why the documents are necessary.
6. The person's name if personal records are sought.

To request a subpoena duces tecum, provide the above information in a declaration under penalty of perjury. The Office of Appeals has a declaration form, or you may prepare your own.

To request a notice to attend and produce, provide the above information, and also provide the address of the witness and the name and address of the person if the notice seeks personal records of the individual. Provide all of this information in writing or by speaking to a judge.

THE HEARING

If you appear in person, arrive at least 15 minutes before the hearing to review the case file. If you appear by telephone, review any documents you receive before the hearing, and have them with you during the hearing. You may contact the Office of Appeals to review the case file before the hearing.

At the hearing, each party has the following rights:

1. To testify under oath or affirmation.
2. To present necessary witness testimony.
3. To present documents and other exhibits.
4. To question opposing parties and witnesses.
5. To rebut opposing evidence.

If you disagree with something a witness says, do not interrupt. You will have a chance to question the witness and give your side of the story. An orderly hearing is necessary for a clear record, which benefits all parties. The judge will not permit disruption of the hearing, and may require witnesses to remain outside the hearing room until they testify.

REPRESENTATION

The hearing is designed for parties without a representative. The judge will explain the issues and the order in which evidence will be received, question parties and witnesses to obtain necessary facts, and help you ask questions if necessary. However, you do have the right to be represented by any person, who need not be a lawyer, at your own expense. The judge may limit the fee of a claimant's representative.

THE DECISION

The judge will issue a written decision as soon as possible after the hearing. It will include the facts found from the evidence, the relevant law, and the decision. Payments and collections are handled by EDD, not the Office of Appeals.

FURTHER APPEALS

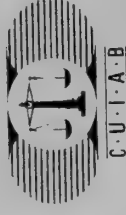
Any party may appeal to the Appeals Board from an unfavorable decision. The filing deadline is 20 days from the decision date in unemployment and disability cases, and 30 days from the decision date in tax cases. The Appeals Board will not conduct a new hearing. It will review the testimony and evidence admitted at the hearing before the judge. A decision of the Appeals Board may be appealed to the superior court.

GOVERNING PROCEDURE

This pamphlet gives general information about hearing procedures. It is not the law. The governing procedure is in the rules of the California Unemployment Insurance Appeals Board, Title 22, California code of Regulations, Sections 5000-5200. These rules are on the Internet at <http://cedr.al.ca.gov>, or you can get a copy from the Office of Appeals without charge.

TO THE CLAIMANT ONLY

If you are still unemployed or disabled, continue to file claims as instructed by EDD while waiting for the decision and determination. If you do not have claim forms,



CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS BOARD

**PLEASE READ
IMMEDIATELY**

HEARING INFORMATION

HEARING

An appeal or petition from the action of the Employment Development Department (EDD) is scheduled for hearing by an Administrative Law Judge of the California Unemployment Insurance Appeals Board. The hearing notice and this pamphlet contain information about the hearing. Please read them immediately.

OFFICE OF APPEALS

The Office of Appeals that is handling this case is shown at the bottom of the hearing notice. You may contact that office about the case by telephone, fax, electronic transmission, mail, delivery, or in person. Please include the hearing date and the case number. Notify the Office of Appeals and EDD of any change in your mailing or electronic address or your telephone or fax number. Please contact EDD about any other matters.

INTERPRETER OR ACCOMMODATIONS

If you need an interpreter or special accommodations for yourself or a witness, contact the Office of Appeals immediately and they will be provided without charge.

PUFDE OBTENER ESTE DOCUMENTO EN ESPAÑOL

TIME AND PLACE OF HEARING

You are scheduled to appear in person at the time and place shown on the hearing notice, unless the notice tells you to appear by telephone.

It is important that you bring all of your evidence, including documents and witnesses, to the hearing. If there is a further appeal, additional evidence that could reasonably have been submitted at the hearing will not be accepted.

TELEPHONE HEARING

If the notice tells you to appear by telephone, call the hearing room number shown at the time scheduled. You may call collect.

If any party is scheduled to appear by telephone, the Office of Appeals must receive any documents you want to present before the deadline on the hearing notice or set by a judge. If you cannot meet this deadline, contact the Office of Appeals immediately.

If good cause prevents you or a necessary witness from appearing in person, you may request a telephone hearing. Contact the Office of Appeals immediately to do so. Good cause is a substantial reason. It generally includes a distance of more than 50 miles from the hearing. It generally does not include the ordinary press of business or personal affairs.

WRITTEN STATEMENT

If you or a necessary witness cannot appear, you may submit one or more written statements or sworn declarations, along with any necessary documents. A sworn declaration is generally less persuasive than testimony given at the hearing, but more persuasive than an unsworn statement.

However, it may be the best option under the circumstances. The last sentence of each

declaration should state: **"I declare under penalty**

of perjury under the laws of the State of

California that the foregoing is true and correct." The date and signature of the person making the declaration should be at the end of each declaration.

Each declaration and any document must be received by the judge by the hearing date. If any party is scheduled to appear by telephone, they must be received by the Office of Appeals before the deadline on the hearing notice or set by a judge. If you cannot meet this deadline, contact the Office of Appeals immediately.

CHANGE IN HEARING DATE OR TIME

The hearing date or time will not be changed unless good cause prevents a party or a necessary witness from appearing as scheduled. Good cause is a substantial reason. It generally does not include the ordinary press of business or personal affairs. To request that the hearing date or time be changed, contact the Office of Appeals immediately.

FAILURE TO APPEAR

The judge will usually dismiss the case if the party that filed it fails to appear or submit a statement or declaration. If another party fails to appear, the judge will usually decide the case based on the available evidence.

If you fail to appear, you must show good cause for your failure if you later ask to have the matter reopened. If an emergency prevents you from appearing as scheduled, contact the Office of Appeals immediately. If you do not, the judge may decide that you have no good cause for reopening.

WITHDRAWAL

Only the party that filed the appeal or petition may withdraw it by so notifying the Office of Appeals or a judge at any time before the decision is issued.

WITNESSES

You may present witness testimony that is necessary to decide the case. Unnecessary or cumulative testimony is not permitted. Eye-witness testimony is generally more persuasive than second-hand testimony.

You may ask a witness to appear voluntarily, or

attend or a subpoena. A notice to attend is a request transmitted to the witness by the Office of Appeals. A subpoena is an order to attend which the requesting party must deliver or have delivered to the witness in person a reasonable time before the hearing.

To request a notice to attend or a subpoena, contact the Office of Appeals and give the following information:

1. Whether you are requesting a notice to attend or a subpoena.
2. The hearing date and the case number or the claimant's social security number.
3. The name and address of the witness.
4. Why the testimony of the witness is necessary.

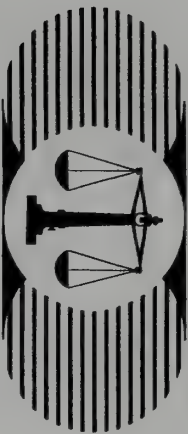
If the testimony is necessary, the judge will issue a notice to attend or a subpoena. If a witness does not comply with a notice to attend, the judge may issue a subpoena for the witness to attend a later hearing. Any witness who complies may claim witness fees and mileage from the Office of Appeals.

DOCUMENTS

Bring all necessary documents to the hearing, or submit them before the hearing if so required as stated above. Present all documents that will support your position, such as letters, medical statements, pay records, and employment contracts. The judge will keep your documents in the case file. Make copies for yourself and the other parties before the hearing.

If someone else has a document you need, you may ask that person for a copy, or request the Office of Appeals to issue a notice to attend and produce or a subpoena duces tecum. A notice to attend and produce is a written request for documents transmitted by the Office of Appeals. A subpoena duces tecum is an order for production of documents that the requesting party must deliver or have delivered to the witness in person in a reasonable time before the hearing.

California Unemployment Insurance Appeals Board



C · U · I · A · B
www.cuiab.ca.gov

Office of Appeals Hearing Information

PLEASE READ IMMEDIATELY

Español al reverso

GOVERNING PROCEDURE: This pamphlet gives general information about hearing procedures. It is not the law. The governing procedure is in the rules of the California Unemployment Insurance Appeals Board, California Code of Regulations, Title 22, Sections 5000-5168. These rules are available on the Internet at <http://ccr.ca.gov> by selecting the list of CCR Titles and from there selecting Title 22 Social Security, Division 1, Subdivision 2, Chapters 1, 2, and 3. A copy is also available from the Office of Appeals without charge.

DE 6412 Rev. 40 (12-06)



WHY DID I RECEIVE THE NOTICE OF HEARING?

- The Office of Appeals sent you the **Notice of Hearing** because:
- The Employment Development Department (EDD) made a decision about benefits;
 - A party disagreed with EDD's decision and filed an appeal. The parties are typically the claimant who claims benefits, the employer, and EDD; and
 - You are a party to the appeal.

WHEN AND WHERE IS THE HEARING?

In the upper-right hand corner of your **Notice of Hearing** there is a box with the date, time and place of your hearing. Please read the box carefully. The box tells you to appear either *in person* or *by phone*.

- If the box tells you to appear *in person*, go to the place stated in the box. Get there at least 15 minutes before your hearing time. You will need that time to review the case file. Contact the Office of Appeals at the number listed on your **Notice of Hearing**. If you would like to review the case file before the hearing date contact the Office of Appeals at the number listed on your **Notice of Hearing**.
- If the box tells you to appear *by phone*, follow the instructions in the box to call in for your hearing. Please review all papers sent to you before you call in.

CAN THE HEARING DATE OR TIME BE CHANGED?

Not usually. You must have a good reason. Consider the options below before asking for a change. Call the Office of Appeals right away to make your request. See the number listed on your **Notice of Hearing**.

WHAT IF I CANNOT GO TO THE HEARING?

If you or your witnesses cannot go to the hearing, try using one of the following:

- **Appear by phone.** If a serious problem keeps you from going to the hearing you may ask to appear by phone. Call the Office of Appeals right away. You must have a good reason, such as being more than 50 miles from the place of hearing.
- **Appear by written declaration.** Write your side of the story and include this sentence at the end: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Please date and sign it. The judge must receive it before the hearing.
- **Appeal by written statement.** Write your side of the story. The judge must receive it before the hearing. A written declaration, described above, has more weight than a written statement.

SHOULD I GO TO THE HEARING?

- Yes, if you do not go or appear in some other way:
- The judge will usually dismiss your case if you are the party who filed the appeal.
 - The judge will usually hold the hearing without you if another party filed the appeal.

WHAT WILL HAPPEN AT THE HEARING?

At the hearing the judge will:

- Record the hearing.
- Explain the hearing process.
- Question parties and witnesses under oath.
- Receive papers and other exhibits.

At the hearing each party can:

- Present necessary witnesses and exhibits.
- Question parties and witnesses.
- Respond to evidence presented by others.
- Make closing comments.

DO I NEED A LAWYER?

No. Most people represent themselves. The judge will explain the process, question parties and witnesses, and help you ask questions if needed. You have the right to be represented by any person at your own expense. The person need not be a lawyer.

WHAT IF I NEED AN INTERPRETER?

The **Notice of Hearing** will tell you if an interpreter will be provided. If it does not, contact the Office of Appeals right away. See the number listed on your **Notice of Hearing**. We will get and pay for an interpreter.

WHAT IF I NEED SPECIAL ACCOMMODATIONS?

Contact the Office of Appeals right away for any special accommodations, such as assistive listening devices or wheelchair accessibility. See the number listed on your **Notice of Hearing**.

WHAT IF I MOVED?

Contact the Office of Appeals right away. See the number listed on your **Notice of Hearing**.

Contact EDD right away. See the following numbers for Unemployment Insurance (UI), Disability Insurance (DI) or Paid Family Leave (PFL) claims:

UI (800) 300-5616	TTY (800) 815-9387
DI (800) 486-3287	TTY (800) 563-2441
PFL (877) 238-4373	TTY (800) 445-1312

SHOULD I BRING WITNESSES TO THE HEARING?

Bring any witnesses who support your case. **Eyewitnesses** are best. The judge will decide which witnesses will be allowed to testify. Witnesses may have to wait outside the hearing room until they are asked to testify.

WHAT IF A WITNESS DOES NOT WANT TO ATTEND THE HEARING?

Contact the Office of Appeals right away. See the number listed on your **Notice of Hearing**. If approved, the Office of Appeals will prepare either a:

- Notice to Attend – A request to attend the hearing that we will mail to your witness.
- Subpoena – An order to attend the hearing that you will hand o have handed to the witness.

SHOULD I BRING PAPERS TO THE HEARING?

Bring any papers that support your case. These should include any important information such as letters, doctors' notes, or pay records. Bring three copies if you can. The judge will keep one copy of the papers as evidence in the case file.

WHAT IF I DO NOT HAVE THE PAPERS?

If someone else has a paper you need, ask that person for a copy. If that person will not give you a copy, contact the Office of Appeals right away. See the number listed on your **Notice of Hearing**. If approved, the Office of Appeals will prepare either a:

- Notice to Produce – A request that we will mail to your witness to produce the papers for the hearing.
- Subpoena Duces Tecum – An order to produce the papers that you will hand or have handed to the witness.

WHAT IF I WANT TO CANCEL THE APPEAL?

If you filed the appeal, you may ask to cancel it. This is called a request to withdraw. You may withdraw by calling or writing to the Office of Appeals. See the number or address listed on your **Notice of Hearing**. If you did not file the appeal, you may not ask to withdraw it.

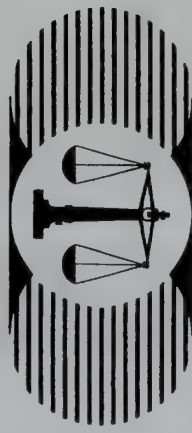
WHAT IF I MISSED THE HEARING?

Contact the Office of Appeals right away. See the number listed on your **Notice of Hearing**.

WHEN WILL I GET THE JUDGE'S DECISION?

The Office of Appeals will mail the decision after the hearing date.

California Unemployment Insurance Appeals Board



C · U · I · A · B
www.cuibab.ca.gov

Informacion de la Oficina de Apelaciones Sobre la Audiencia

POR FAVOR LEA INMEDIATAMENTE English on reverse

PROCEDIMIENTO REGULADOR. Este folleto brinda informacion general sobre los procedimientos de audiencias. No es la ley. El procedimiento regulador esta en los Articulos 5000-5200 del Código de Procedimientos de California, del Título 22 de los reglamentos de la Junta de Apelaciones del Seguro del Desempleo de California. Estos reglamentos estan en la Internet en el <http://ccr.ca.gov>, al seleccionar la Lista de CCR. Tíble y de allí selecciona Title 22 Social Security, Division 1, Subdivision 2, Chapters 1, 2 y 3, o puede obtener gratis un ejemplar de los mismos, de la Oficina de Apelaciones.

DE 6412 Rev. 40 (12-06)

¿PORQUE RECIBI LA NOTIFICACION DE AUDIENCIA?

La Oficina de Apelaciones le envió la **Notificación de Audiencia** porque:

- El Departamento del Desarrollo del Empleo (EDD) tomó una decisión referente a los beneficios.
- Una de las partes interesadas no estuvo de acuerdo con la decisión del EDD y presentó una apelación. Las partes interesadas usualmente son el reclamante quien solicita los beneficios, el empleador, y el EDD, y
- Usted es una de las partes interesadas de la apelación.

¿EN DONDE Y CUANDO ES LA AUDIENCIA?

En la parte superior derecha de su **Notificación de Audiencia** hay un cuadro en donde se indica la fecha, la hora y el lugar de la audiencia. Por favor lea cuidadosamente lo que se encuentra en el cuadro. Este cuadro le indica que usted comparezca **personalmente** o que comparezca **por teléfono**.

- Si el cuadro indica que usted comparezca **personalmente**, vaya al lugar indicado. Llegue por lo menos 15 minutos antes de la hora de la audiencia. Usted necesitará ese tiempo para revisar el expediente. Si usted desea revisar el expediente antes de la fecha de la audiencia comuníquese con la Oficina de Apelaciones al número de teléfono que aparece en la **Notificación de Audiencia**.
- Si el cuadro indica que usted comparezca **por teléfono**, siga las instrucciones en el cuadro para llamar por teléfono y tener su audiencia. Por favor revise todos los documentos que se le enviaron antes de llamar.

¿PUEDE CAMBIARSE LA FECHA O LA HORA DE LA AUDIENCIA?

Por lo general no. Usted debe tener una buena razón. Antes de solicitar un cambio tome en consideración las opciones abajo indicadas. Llame inmediatamente a la Oficina de Apelaciones para solicitar el cambio. Vea el número de teléfono que aparece en la **Notificación de Audiencia**.

¿QUE HAGO SI NO PUEDO IR A LA AUDIENCIA?

Si usted o sus testigos no pueden presentarse el día de la audiencia, trate de hacer lo siguiente:

- **Comparecer por teléfono.** Si algún problema serio le impide ir a la audiencia usted puede solicitar comparecer por teléfono. Llame a la Oficina de Apelaciones inmediatamente. Usted debe tener una buena razón, tal como estar a una distancia de más de 50 millas del lugar de la audiencia.
- **Comparecer por medio de una declaración por escrito.** Escriba el lado de su historia e incluya la siguiente oración al final: "Declaro bajo pena de perjurio conforme a las leyes del Estado de California que lo anterior es verdadero y correcto." Por favor firme y ponga la fecha en la declaración. El juez debe recibirla antes del día de la audiencia.
- **Comparecer por medio de un testimonio por escrito.** Escriba el lado de su historia. El juez debe recibir el testimonio antes del día de la audiencia. Una declaración por escrito, la cual se describe arriba, tiene más peso que un testimonio por escrito.

¿DEBO IR A LA AUDIENCIA?

Si. De no ir o de no comparecer de una u otra forma:

- El juez normalmente declarará sin lugar el caso si usted es la parte interesada que hizo la apelación.
- El juez normalmente llevará acabo la audiencia sin usted si la otra parte interesada es la que hizo la apelación.

¿QUE SUCEDERA EN LA AUDIENCIA?

En la audiencia el juez:

- Graba la audiencia.
- Explica el proceso de la audiencia.
- Interroga a las partes interesadas y a los testigos bajo juramento.
- Recibe documentos y otras evidencias.

En la audiencia cada parte interesada puede:

- Presentar testigos necesarios y evidencias necesarias.
- Hacer preguntas a las partes interesadas y a los testigos.
- Responder a la evidencia presentada por otros.
- Hacer comentarios al final de la audiencia.

¿NECESITO UN ABOGADO?

No. La mayoría de la gente se representa a si mismo. El juez explicará el proceso, hará preguntas a las partes interesadas y a los testigos, y ayudará a formular preguntas si es necesario. Usted tiene el derecho de ser representado por cualquier persona, a su propio costo. Esta persona no necesariamente tiene que ser abogado(a).

¿SI NECESITO UN INTÉRPRETE?

La **Notificación de Audiencia** le indicará si un intérprete va a ser proporcionado. De no ser esto indicado, comuníquese con la Oficina de Apelaciones inmediatamente. Vea el número de teléfono en la **Notificación de Audiencia**. Nosotros obtendremos y pagaremos los servicios del intérprete.

¿SI NECESITO ARREGLOS ESPECIALES?

Comuníquese a la Oficina de Apelaciones de inmediato para cualquier arreglo especial, tales como aparatos auditivos que le asistan o accesibilidad para una silla de ruedas. Vea el número de teléfono que aparece en la **Notificación de Audiencia**.

¿SI ME CAMBIE DE DOMICILIO?

Comuníquese a la Oficina de Apelaciones inmediatamente. Vea el número de teléfono anclado en la **Notificación de Audiencia**. Comuníquese al EDD inmediatamente. Vea los siguientes números telefónicos para reclamos de Seguro de Desempleo (UI), Seguro de Incapacidad (DI) o Permiso Familiar Pagado (PFL):

UI (800) 326-8927	TTY (800) 815-9387
DI (866) 658-8846	TTY (800) 563-2441
PFL (877) 379-3819	TTY (800) 445-1312

¿DEBO TRAER TESTIGOS A LA AUDIENCIA?

Traiga cualquier testigo que respalde su caso. Testigos oculares son mejores. El juez decidirá que testigos serán permitidos para dar testimonio. Es posible que los testigos tengan que esperar afuera de la sala de audiencias hasta que sean llamados para dar su testimonio.

¿SI UN TESTIGO NO QUIERE ASISTIR A LA AUDIENCIA?

Comuníquese a la Oficina de Apelaciones inmediatamente. Vea el número de teléfono que aparece en la **Notificación de Audiencia**. Si es aprobado la Oficina de Apelaciones preparará una:

- **Notificación para Asistir** - Una petición para asistir a la audiencia la cual nosotros enviaremos por correo a su testigo.
- **Citación de un Testigo** - Una orden para comparecer en la audiencia la cual usted entregará o hará que le sea entregada a su testigo.

¿DEBO LLEVAR DOCUMENTOS A LA AUDIENCIA?

Traiga cualquier documento que respalde su caso. Los documentos deben incluir cualquier información importante tales como cartas, declaraciones médicas, o exámenes de pago. Si puede, presente tres copias. El juez conservará una copia de los documentos como evidencia en el expediente del caso.

¿SI NO LLEGO LOS DOCUMENTOS?

Si alguien tiene un documento que usted necesita, pídale una copia a esa persona. Si esa persona no le proporciona una copia, comuníquese con la Oficina de Apelaciones de inmediato. Vea el número de teléfono en la **Notificación de Audiencia**. De ser aprobado, la Oficina de Apelaciones preparará cualquiera de lo siguiente:

- **Notificación para Presentar Documentos** - una petición la cual será enviada por nosotros a su testigo para presentar documentos en la audiencia.
- **Orden de Citación para Presentar Documentos** - una orden para presentar documentos la cual usted entregará o hará que sea entregada al testigo.

¿SI DESEO CANCELAR LA APELACION?

Si usted presentó la apelación usted puede retirarla. A esto se le llama una **petición para retirar**. Usted puede retirar la apelación comunicándose o escribiendo a la Oficina de Apelaciones. Vea el número de teléfono o domicilio que aparece en la **Notificación de Audiencia**. Si usted no presentó la apelación, usted no puede solicitar que se retire la apelación.

¿SI FALTÉ A LA AUDIENCIA?

Comuníquese a la Oficina de Apelaciones inmediatamente. Vea el número de teléfono que aparece en la **Notificación de Audiencia**.

¿CUANDO RECIBIRE LA DECISION DEL JUEZ?

La Oficina de Apelaciones le enviará la decisión después de la fecha de la audiencia.

INCOMPATIBLE ACTIVITIES STATEMENT
FOR EMPLOYEES AND OFFICERS OF THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

INTRODUCTION

Government Code Section 19990 requires each appointing power to determine, subject to the approval of the Department of Personnel Administration, those activities which are inconsistent, incompatible, or in conflict with their duties as employees or officers of the state.

It is the policy of the Unemployment Insurance Appeals Board (hereinafter "Appeals Board") to provide civil service employees and exempt officers with guidelines concerning activities which are incompatible with state employment. The purpose is to protect the outstanding record of personal integrity established by employees and officers in carrying out the Board's responsibilities to other state agencies and the public.

Where "notification", "requests for rulings", "advance approval" is required in the following policies, a civil service employee is required to make it in writing to his/her immediate supervisor. The immediate supervisor will forward the request through his/her chain of command to the Secretary/Chief Counsel. If an exempt employee is involved, the matter will be submitted to the Chairman.

DEFINITIONS

"Administrative Law Judge" includes Chief Administrative Law Judge, Secretary/Chief Counsel, Presiding Administrative Law Judge, Senior Appellate Law Judge, and Administrative Law Judge.

"Employee" includes all civil service employees and "exempt" officers of the Appeals Board. The term encompasses any attempt by an employee to circumvent the following policies by the use of a friend, relative, dependent, or outside employment, or other alter ego to accomplish indirectly what the following policies prohibit.

"Member of his/her family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with

whom the administrative law judge maintains a close family-like relationship.

"Person" includes individuals, firms, corporations, partnerships, associations, other governmental bodies, or agents and representatives of these entities.

PROHIBITED ACTIVITIES

The following employments, activities, or enterprises are determined to be inconsistent, incompatible, in conflict with, or inimical to the duties of employees of the Appeals Board:

1. Using the prestige or influence of the state or the appointing authority for the employee's private gain or advantage or the private gain or advantage of another.
 2. Using state time, facilities, equipment, or supplies for private gain or advantage, or for the private gain or advantage of another.
 3. Using, or allowing access to, confidential information available by virtue of state employment or office for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
 4. Receiving or accepting money or any other consideration from anyone other than the State for the performance of an act either during or after working hours which the employee would be required or expected to perform as part of his or her duties.
 5. Performance of an act in other than his or her capacity as an employee knowing that the act may later be subject (directly or indirectly) to the control, inspection, review, audit, or enforcement by the employee.
 6. Receiving or accepting (directly or indirectly) any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the Appeals Board or whose activities are regulated or controlled by the Appeals Board under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee in his or her official duties or was intended as a reward for any official actions performed by the employee.
- employee or officer.

7. Use state or federal postage, indicia or stamping facilities for private purposes, even though reimbursement is made before or after use.

8. Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state employment or office during his or her hours of duty as an employee.

9. Giving advice to, or preparing any documents for, or in any way assisting, or representing any person, other than the Appeals Board, in any court proceeding or any action arising under the Unemployment Insurance Code.

10. Unless he/she receives prior approval of the Appeals Board, an administrative law judge shall not act as an arbitrator or mediator or practice law except (1) for handling family matters, (2) when performing duties as a judge advocate in any component for the Armed Forces, or (3) when requested to do so as a part of his/her official duties by the Appeals Board. Upon prior approval by the Appeals Board, an administrative law judge may act as an arbitrator or mediator or practice law which:

- a. will not interfere with or reduce the efficiency of his/her performance as an administrative law judge; and,
- b. will not result in the use of State time, facilities, equipment or supplies; and,
- c. will not directly or indirectly be related to the functions and responsibilities of the California Unemployment Insurance Appeals Board.

An administrative law judge who wishes to engage in such activities shall, in writing, apply for permission from the Appeals Board. In order that a proper evaluation of the request may be made, the administrative law judge shall submit information which will assist the Appeals Board in determining whether or not the proposed matter or matters to be handled are or will be incompatible, inconsistent, in conflict with, or inimical to his or her responsibilities and functions as an administrative law judge. The Appeals Board shall respond in writing within 20 calendar days of the receipt of the written request for determination. Failure by the Appeals Board to act within the 20 calendar days shall constitute approval of the request.

11. No employee shall make an appearance before a legislative regulatory or other public body as a representative of the Appeals Board unless he/she has been given authority by the Board to do so.

12. No employee shall disclose rulings or decisions by the employee or the Appeals Board until such information is a matter of public record.

13. Engage in any of the political activities prohibited by the Hatch Act (5 U.S.C. 1502(a)).

a. Under the Hatch Act, employees may not:

(1) Use official authority or influence for the purpose of interfering with, or affecting the result of, an election or a nomination for office.

(2) Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

(3) Be a candidate for partisan elective public office. Nonpartisan candidacies are permitted under 5 C.F.R. 151.122.

b. Under the Hatch Act, employees may:

(1) Be a member in such organizations as the Mexican-American Political Association, Young Republicans, Young Democrats, etc.

(2) Express opinions on political subjects and candidates.

(3) Attend and participate in political rallies and conventions.

(4) Sign nominating petitions in support of individuals who wish to become candidates for office.

(5) Make voluntary contributions to political organizations, provided such contributions are not made in a State or federal building or to some other employee or officer of the Board, or to any other employee or officer who is subject to the Hatch Act.

(6) Wear political badges or buttons or display political stickers on private automobiles. However, to assure that no member of the public will believe political bias is being exercised for or against him/her, employees who have direct contact with the public are prohibited from making any partisan display such as wearing a political badge or button during working hours.

(7) Participate in nonpartisan political activities, such as supporting or opposing ballot propositions, and supporting or opposing a candidate for, or becoming a candidate for, nonpartisan office.

(8) Accept appointment to or stand for election to a county or State party committee.

C. All employees and officers are responsible for adherence to these restrictions on political activities. An employee or officer who is in doubt as to whether any particular political activity is prohibited should submit a written statement of the circumstances and a request for a ruling as provided in Section 10, except the failure to respond to the request shall not be deemed approved.

FILING REQUIREMENTS

It is not the intention of the Appeals Board to inquire into the private affairs of its employees. However, the cooperation of all employees is requested in avoiding any activity that will cause embarrassment to the employee, officer, this agency or the State of California.

An employee who is engaging in, or plans to engage in, any employment, activity, or enterprise which could reasonably be construed as being incompatible with his/her duties as a state officer or employee, shall submit a written statement of the circumstances and a request for a ruling to the Appeals Board. Failure to do so may be deemed to be an act of insubordination and may form the basis of punitive action. The Appeals Board will issue a written ruling to the employee.

All employees must file an Incompatible Activities Statement upon 1) initial appointment/ 2) change in classification; 3) change in duties or circumstances that raises the issue of potential conflict with this policy.

APPELLATE PROCEDURE

The intent is to provide employees with a means to resolve possible conflicts with the Incompatible Activities Statement without producing ill will. A represented employee, i.e., a rank-and-file employee under the State Employer/Employee Relations Act, may file a grievance/complaint concerning the application of this policy in accordance with the applicable Memorandum of Understanding. An excluded employee may file a complaint concerning the application of this policy. The final review level for a grievance/complaint or excluded employee complaint concerning application of the policy is the third level.

GOVERNMENT CODE
Title 2. Government of the State of California
Division 3. Executive Department
Part 1. State Departments and Agencies
Chapter 4.5. Administrative Adjudication: General Provisions
Article 16. Administrative Adjudication Code of Ethics

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 11475 (2007)

§ 11475. Name of rules

The rules imposed by this article may be referred to as the Administrative Adjudication Code of Ethics.

Cal Gov Code § 11475.10 (2007)

§ 11475.10. Application

(a) This article applies to the following persons:

(1) An administrative law judge. As used in this subdivision, "administrative law judge" means an incumbent of that position, as defined by the State Personnel Board, for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article shall apply notwithstanding any general statutory provision that this chapter does not apply to some or all of a state agency's adjudicative proceedings.

Cal Gov Code § 11475.20 (2007)

§ 11475.20. Law governing conduct

Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges governs the hearing and nonhearing conduct of an administrative law judge or other presiding officer to which this article applies.

Cal Gov Code § 11475.30 (2007)

§ 11475.30. Definitions

For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

- (a) "Appeal" means administrative review.
- (b) "Court" means the agency conducting an adjudicative proceeding.
- (c) "Judge" means administrative law judge or other presiding officer to which this article applies. Related terms, including "judicial," "judiciary," and "justice," mean comparable concepts in administrative adjudication.
- (d) "Law" includes regulation and precedent decision.

Cal Gov Code § 11475.40 (2007)

§ 11475.40. Inapplicable provisions of Code of Judicial Ethics

The following provisions of the Code of Judicial Ethics do not apply under this article:

- (a) Canon 3B(7), to the extent it relates to ex parte communications.
- (b) Canon 3B(10).
- (c) Canon 3D(3).
- (d) Canon 4C.
- (e) Canons 4E(1), 4F, and 4G.
- (f) Canons 5A-5D. However, the introductory paragraph of Canon 5 applies to persons subject to this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.
- (g) Canon 6.

Cal Gov Code § 11475.50 (2007)

§ 11475.50. Violations

A violation of an applicable provision of the Code of Judicial Ethics, or a violation of the restrictions and prohibitions on accepting honoraria, gifts, or travel that otherwise apply to elected state officers pursuant to Chapter 9.5 (commencing with Section 89500) of Title 9, by an administrative law judge or other presiding officer to

which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

Cal Gov Code § 11475.60 (2007)

§ 11475.60. Compliance requirements

(a) Except as provided in subdivision (b), a person to whom this article applies shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article applies shall comply with Canon 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event within a period of one year after the article becomes applicable.

Cal Gov Code § 11475.70 (2007)

§ 11475.70. Construction and intent

Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

California Code of Judicial Ethics

Amended by the Supreme Court of California effective January 1, 2007; previously amended March 4, 1999, December 13, 2000, December 30, 2002, June 18, 2003, December 22, 2003, January 1, 2005, June 1, 2005, and July 1, 2006

Preface

Preamble

Terminology

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

Canon 4. A judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

Canon 6. Compliance with the code of judicial ethics.

Preface

Formal standards of judicial conduct have existed for more than 50 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

In 1969, the American Bar Association determined that current needs and problems warranted revision of the Canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

Effective January 5, 1975, the California Judges Association adopted a new California Code of Judicial Conduct adapted from the American Bar Association 1972 Model Code. The California code was recast in gender-neutral form in 1986.

In 1990, the American Bar Association Model Code was further revised after a lengthy study. The California Judges Association again reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992.

Proposition 190 (amending Cal. Const., art. VI, § 18(m), effective March 1, 1995) created a new constitutional provision that states, "The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates* in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics."

The Supreme Court formally adopted the 1992 Code of Judicial Conduct in March 1995, as a transitional measure pending further review.

The Supreme Court formally adopted the Code of Judicial Ethics effective January 15, 1996.

The Supreme Court formally adopted amendments to the Code of Judicial Ethics, effective April 15, 1996. The *Advisory Committee Commentary* is published by the Supreme Court Advisory Committee on Judicial Ethics.

* Terms with an asterisk (*) are defined in the Terminology section.

Preamble

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible member of government under the rule of law.

The Code of Judicial Ethics ("Code") establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office. The Code consists of broad declarations called Canons, with subparts, and a Terminology section. Following each Canon is a Commentary section prepared by the Supreme Court Advisory Committee on Judicial Ethics. The Commentary, by explanation and example, provides guidance as to the purpose and meaning of the Canons. The Commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the Code. Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.

The Canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the Code shall either impair the essential independence of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The Code governs the conduct of judges and judicial candidates* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Terminology

Terms explained below are noted with an asterisk (*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D.

"Candidate." A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 5, 5A, 5B, 5C, and 6E.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (*Commentary*).

"Law" denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (*Commentary*), 2A, 2C (*Commentary*), 3A, 3B(2), 3B(7), 3E, 4B (*Commentary*), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

"Member of the judge's family" denotes a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(2), 4D(1) (*Commentary*), 4D(2), 4E, 4G (*Commentary*), and 5A.

"Member of the judge's family residing in the judge's household" denotes a spouse or registered domestic partner and those persons who reside in the judge's household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5) and 4D(6).

"Nonprofit youth organization" is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to benefiting and serving the interests of minors and which maintains its nonprofit status in accordance with applicable state and federal tax laws. See Canon 2C.

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to information that is sealed by statute or court order, impounded, or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Canon 3B(11).

"Political organization" denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A.

"Registered domestic partner" denotes a person who has registered for domestic partnership pursuant to state law or who is recognized as a domestic partner pursuant to Family Code section 299.2.

"Temporary Judge." A temporary judge is an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 4C(3)(d)(i), 6A, and 6D.

"Require." Any Canon prescribing that a judge "require" certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (*Commentary*), 3B(9), and 3C(2).

"Subordinate judicial officer." A subordinate judicial officer is, for the purposes of this Code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canon 6A.

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code.

ADVISORY COMMITTEE COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making, and this Code should be read and interpreted with that function in mind.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

ADVISORY COMMITTEE COMMENTARY

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.

The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

See also Commentary under Canon 2C.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others; nor shall a judge testify voluntarily as a character witness. A judge shall not initiate communications with a sentencing judge or a probation or corrections officer, but may provide them with information for the record in response to an official request. A judge may initiate communications with a probation or corrections officer concerning a member of the judge's family,* provided the judge is not identified as a judge in the communication.

ADVISORY COMMITTEE COMMENTARY

A strong judicial branch, based on the prestige which comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family; or use his or her position to gain deferential treatment when stopped by a police officer for a traffic offense.*

As to the use of a judge's title to identify a judge's role in the presentation and creation of legal education programs and materials, see Commentary to Canon 4B. In contracts for publication of a judge's writings, a judge should retain control over the advertising, to the extent feasible, to avoid exploitation of the judge's office. As to the acceptance of awards, see Canon 4D(6)(c) and Commentary.

A judge must not testify as a character witness without being subpoenaed because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. A judge may provide information on behalf of a lawyer or a judge involved in disciplinary proceedings, and shall provide information to disciplinary bodies when officially requested to do so. This Canon does not afford judges a privilege against testifying in response to any official summons.

This Canon does not preclude internal discussions among judges regarding the application of substantive or procedural provisions of law to any pending criminal or civil case.

(3) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference, relating to the evaluation of persons being considered for a judgeship) and otherwise participate in the process of judicial selection.

(4) A judge shall not use the judicial title in any written communication intended to advance the personal or pecuniary interest of the judge. A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge of the individual. These written communications may include the judge's title and be written on stationery that uses the judicial title.

C. Membership in Organizations

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.

This Canon does not apply to membership in a religious organization or an official military organization of the United States. So long as membership does not violate Canon 4A, this Canon does not bar membership in a nonprofit youth organization.*

ADVISORY COMMITTEE COMMENTARY

Membership of a judge in an organization that practices invidious discrimination gives rise to a perception that the judge's impartiality is impaired. This Canon exempts membership in religious and military organizations and, subject to Canon 4A, does not bar membership in nonprofit youth organizations. These exemptions are necessary because membership in United States military organizations is subject to current valid military regulations, and religious beliefs are constitutionally protected. Membership in nonprofit youth organizations* is not barred to accommodate individual rights of intimate association and free expression. See also Canon 3E and its Commentary concerning disqualification and disclosure.*

Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, national origin, or sexual orientation persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, national origin, or sexual orientation, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law also violates Canon 2 and Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that the judge knows practices such invidious discrimination or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A.*

(Canon 2C amended effective June 18, 2003.)

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

ADVISORY COMMITTEE COMMENTARY

Canon 3B(1) is based upon the affirmative obligation contained in the Code of Civil Procedure.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all court staff and personnel* under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.

(Canon 3B (5) amended effective December 22, 2003.)

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(b) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(e) A judge may initiate or consider any ex parte communication when expressly authorized by law* to do so.

ADVISORY COMMITTEE COMMENTARY

The proscription against communications concerning a proceeding includes communications from lawyers, law professors, and other persons who are not participants in the proceeding, except to the limited extent permitted by the exceptions noted in Canon 3B(7).

This Canon does not prohibit a judge from initiating or considering an ex parte communication when authorized to do so by stipulation of the parties.

This Canon does not prohibit court staff from communicating scheduling information or carrying out similar administrative functions.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file an amicus curiae brief.

A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law. For example, a judge is statutorily authorized to investigate and consult witnesses informally in small claims cases.*

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently.

ADVISORY COMMITTEE COMMENTARY

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to require that court officials, litigants, and their lawyers cooperate with the judge to that end.*

(9) A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

ADVISORY COMMITTEE COMMENTARY

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

ADVISORY COMMITTEE COMMENTARY

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

ADVISORY COMMITTEE COMMENTARY

This Canon makes it clear that judges cannot make use of information from affidavits, jury results, or court rulings, before they become public information, in order to gain a personal advantage.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff and court personnel* under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

ADVISORY COMMITTEE COMMENTARY

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, court reporters, court interpreters, and bailiffs. Consent by the parties to an

appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(4).

(5) A judge shall perform administrative duties without bias or prejudice. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.

(Canon 3C(5) adopted effective December 22, 2003.)

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.*

(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action.

(3) A judge who is charged by prosecutorial complaint, information, or indictment or convicted of a crime in the United States, other than one that would be considered a misdemeanor not involving moral turpitude or an infraction under California law, but including all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol, shall promptly and in writing report that fact to the Commission on Judicial Performance.

ADVISORY COMMITTEE COMMENTARY

*Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or a report of the violation to the presiding judge, appropriate authority, * or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional reporting requirements regarding lawyers.*

(Canon 3D(3) amended effective March 4, 1999; previously amended effective June 19, 1997; adopted effective January 15, 1996.)

E. Disqualification.

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.

(2) In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

(3) Ownership of a corporate bond issued by a party to a proceeding and having a fair market value exceeding one thousand five hundred dollars is disqualifying. Ownership of government bonds issued by a party to a proceeding is disqualifying only if the outcome of the proceeding could substantially affect the value of the judge's bond. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

ADVISORY COMMITTEE COMMENTARY:

The distinction between corporate and government bonds is consistent with the Political Reform Act (see Gov. Code, § 82034), which requires disclosure of corporate bonds, but not government bonds. Canon 3E(3) is intended to assist judges in complying with Code of Civil Procedure section 170.1(a)(3) and Canon 3E(5)(d).

(Canon 3E(3) adopted effective December 22, 2003; renumbered effective January 1, 2005.)

(4) An appellate justice shall disqualify himself or herself in any proceeding if for any reason:

(a) the justice believes his or her recusal would further the interest of justice;
or

(b) the justice substantially doubts his or her capacity to be impartial; or

(c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial.

(Canon 3E(4) renumbered effective January 1, 2005.)

(5) Disqualification of an appellate justice is also required in the following instances:

(a) The appellate justice has appeared or otherwise served as a lawyer in the pending matter, or has appeared or served as a lawyer in any other matter involving

any of the same parties if that other matter related to the same contested issues of fact and law as the present matter.

(b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.

(c) The appellate justice represented a public officer or entity and personally advised or in any way represented such officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) The appellate justice, or his or her spouse or registered domestic partner, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, fraternal or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary interests and those of his or her spouse or registered domestic partner and of minor children living in the household.

(e) The justice or his or her spouse or registered domestic partner, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner thereof, is a party or an officer, director or trustee of a party to the proceeding, or a lawyer or spouse or registered domestic partner of a lawyer in the proceeding is the spouse, registered domestic partner, former spouse, former registered domestic partner, child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner, or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has a personal knowledge of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer. The justice's spouse or registered domestic partner or a person within the third degree of relationship to the justice or his or her spouse or registered domestic partner, or the person's spouse or registered domestic partner, was a witness in the proceeding.

(g) A temporary or permanent physical impairment renders the justice unable properly to perceive the evidence or conduct the proceedings.

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding;

(ii) The matter before the justice includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral;

(iii) The justice directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the justice has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iv) The justice will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the justice, and among those available for selection is an individual or entity with whom the justice has the arrangement, with whom the justice has previously been employed or served, or with whom the justice is discussing or has discussed the employment or service.

For purposes of this canon, "participating in discussions" or "has participated in discussions" means that the justice solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral or responded to an unsolicited statement regarding, or an offer of, such employment or service by

expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a justice's response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

For purposes of this canon, "party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this canon, "dispute resolution neutral" means an arbitrator, a mediator, a temporary judge appointed under section 21 of article VI of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, a special master, a neutral evaluator, a settlement officer, or a settlement facilitator.

ADVISORY COMMITTEE COMMENTARY:

Canon 3E(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when recusal or disqualification is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association's Model Code of Judicial Conduct, and related case law.

Canon 3E(4) sets forth the general standards for recusal of an appellate justice. The term "appellate justice" includes justices of both the Courts of Appeal and the Supreme Court. Generally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

However, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must promptly disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

In some instances, membership in certain organizations may have the potential to give an appearance of partiality, although membership in the organization generally may not be barred by Canon 2C, Canon 4, or any other specific canon. A judge holding membership in an organization should disqualify himself or herself whenever doing so

would be appropriate in accordance with Canon 3E(1), 3E(4), or 3E(5) or statutory requirements. In addition, in some circumstances, the parties or their lawyers may consider a judge's membership in an organization relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification. In accordance with this Canon, a judge should disclose to the parties his or her membership in an organization, in any proceeding in which the judge believes the parties or their lawyers might consider this information relevant to the question of disqualification, even if the judge concludes there is no actual basis for disqualification.

(Canon 3E(5) renumbered effective January 1, 2005.)

(Canon 3E amended effective January 1, 2007; adopted effective January 15, 1996; previously amended effective April 15, 1996, June 19, 1997, March 4, 1999, December 13, 2000, June 18, 2003, December 22, 2003, and January 1, 2005.)

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

ADVISORY COMMITTEE COMMENTARY

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of a classification such as their race, sex, religion, sexual orientation, or national origin. See Canon 2C and accompanying Commentary.

B. Quasi-judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this Code.

ADVISORY COMMITTEE COMMENTARY

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law,* the legal system, and the administration of justice, including revision of substantive and procedural law* and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.**

It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of the judicial title does not contravene Canons 2A and 2B.

Judges are not precluded by their office from engaging in other social, community, and intellectual endeavors so long as they do not interfere with the obligations under Canons 2C and 4A.

C. Governmental, Civic, or Charitable Activities

(1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law,* the legal system, or the administration of justice or in matters involving the judge's private economic or personal interests.

ADVISORY COMMITTEE COMMENTARY

See Canon 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system, or the administration of justice. A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions or in connection with historical, educational, or cultural activities.

ADVISORY COMMITTEE COMMENTARY

Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice as authorized by Canon 4C(3). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges shall not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary, or which constitute a public office within the meaning of the California Constitution, article VI, section 17.*

Canon 4C(2) does not govern a judge's service in a nongovernmental position. See Canon 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, other than a law school, would be prohibited under Canon 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 4C(3).*

(3) Subject to the following limitations and the other requirements of this Code,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, article VI, section 17;

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit;

ADVISORY COMMITTEE COMMENTARY

Canon 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice. See Canon 4C(2).*

Canon 4C(3) uses the phrase, "Subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Canon 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Canon 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Canon 4C. For example, a judge is prohibited by Canon 4G from serving as a legal advisor to a civic or charitable organization.

Service on the board of a homeowners' association or a neighborhood protective group is proper if it is related to the protection of the judge's own economic interests. See Canons 4D(2) and 4D(4). See Canon 2B regarding the obligation to avoid improper use of the prestige of a judge's office.

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member;

ADVISORY COMMITTEE COMMENTARY

The changing nature of some organizations and of their relationship to the law makes it necessary for the judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. Some organizations regularly engage in litigation to achieve their goals or fulfill their purposes. Judges should avoid a leadership role in such organizations as it could compromise the appearance of impartiality.*

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fund raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, retired judges, and temporary judges*);

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fund raising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).

ADVISORY COMMITTEE COMMENTARY

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other judges (excluding court commissioners, referees, retired judges,*

court-appointed arbitrators, and temporary judges*) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund raising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial Activities

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

ADVISORY COMMITTEE COMMENTARY

The Time for Compliance provision of this Code (Canon 6F) postpones the time for compliance with certain provisions of this Canon in some cases.

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.*

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against the misuse of the prestige of judicial office.

In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

ADVISORY COMMITTEE COMMENTARY

Although participation by a judge in business activities might otherwise be permitted by Canon 4D, a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in any business activity if the judge's participation would involve misuse of the prestige of judicial office. See Canon 2B.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household* from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

ADVISORY COMMITTEE COMMENTARY

In addition to the prohibitions set forth in Canon 4D(5) regarding gifts, other laws may be applicable to judges, including, for example, Code of Civil Procedure section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.).

Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, or favor to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.**

The application of Canon 4D(5) requires recognition that a judge cannot reasonably be expected to anticipate all persons or interests that may come before the court.

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household* from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or registered domestic partner or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

(b) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity, devoted to the improvement of the law,* the legal system, or the administration of justice;

ADVISORY COMMITTEE COMMENTARY

Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(d).

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner or other member of the judge's family residing in the judge's household,* including gifts, awards, and benefits for the use of both the spouse or registered domestic partner or other family member and the judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(d) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY

Although Canon 4D(6)(d) does not preclude ordinary social hospitality between members of the bench and bar, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of bias. See Canon 2B.

(e) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

ADVISORY COMMITTEE COMMENTARY

A gift to a judge, or to a member of the judge's family residing in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(f).*

(f) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(g) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

(Canon D amended effective January 1, 2007.)

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary,* except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary* will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or minor or conservatee becomes engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

ADVISORY COMMITTEE COMMENTARY

The Time for Compliance provision of this Code (Canon 6F) postpones the time for compliance with certain provisions of this Canon in some cases.

*The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. * For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of trust holdings the retention of which would place the judge in violation of Canon 4D(4).*

F. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

ADVISORY COMMITTEE COMMENTARY

Canon 4F does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of his or her judicial duties.

G. Practice of Law

A judge shall not practice law.

ADVISORY COMMITTEE COMMENTARY

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or member of the judge's family. See Canon 2B.*

This prohibition applies to subordinate judicial officers, magistrates, special masters, and judges of the State Bar Court.

(Canon 4G amended effective January 1, 2005.)

H. Compensation and Reimbursement

A judge may receive compensation and reimbursement of expenses as provided by law* for the extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge and, where appropriate to the

occasion, by the judge's spouse or registered domestic partner or guest. Any payment in excess of such an amount is compensation.

ADVISORY COMMITTEE COMMENTARY

Judges should be aware of the statutory limitations on accepting gifts, including honoraria.

(Canon H amended effective January 1, 2007.)

CANON 5

A JUDGE OR JUDICIAL CANDIDATE* SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates* for judicial office.

A. Political Organizations

Judges and candidates* for judicial office shall not

(1) act as leaders or hold any office in a political organization;*

(2) make speeches for a political organization* or candidate* for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or

(3) personally solicit funds for a political organization* or nonjudicial candidate;* or make contributions to a political party or political organization* or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization* or candidate,* or in excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations* or nonjudicial candidates.*

ADVISORY COMMITTEE COMMENTARY

The term "political activity" should not be construed so narrowly as to prevent private comment.

This provision does not prohibit a judge from signing a petition to qualify a measure for the ballot without the use of the judge's official title.

In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a

nonjudicial candidate or a measure not directly affecting the administration of justice otherwise prohibited by this Canon.*

Subject to the monetary limitation herein to political contributions, a judge may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal shall be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to contributions to any judge or candidate for judicial office.*

Under this Canon, a judge may publicly endorse another judicial candidate. Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity and impartiality of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.*

Although members of the judge's family are not subject to the provisions of this Code, a judge shall not avoid compliance with this Code by making contributions through a spouse or registered domestic partner or other family member.*

(Canon 5A amended effective January 1, 2007.)

B. Conduct During Judicial Campaigns

A candidate* for election or appointment to judicial office shall not (1) make statements to the electorate or the appointing authority that commit the candidate with respect to cases, controversies, or issues that could come before the courts, or (2) knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent.

ADVISORY COMMITTEE COMMENTARY

This code does not contain the "announce clause" that was the subject of the United States Supreme Court's decision in Republican Party of Minnesota v. White (2002) 536 U.S. 765. That opinion did not address the "commit clause," which is contained in Canon 5B(1). The phrase "appear to commit" has been deleted because, although judicial candidates cannot promise to take a particular position on cases, controversies, or issues prior to taking the bench and presiding over individual cases, the phrase may have been overinclusive.

Canon 5B(2) prohibits making knowing misrepresentations, including false or misleading statements, during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

(Canon 5B amended effective December 22, 2003.)

C. Speaking at Political Gatherings

Candidates* for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.

D. Measures to Improve the Law

Except as otherwise permitted in this Code, judges shall not engage in any political activity, other than in relation to measures concerning the improvement of the law,* the legal system, or the administration of justice.

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a subordinate judicial officer, magistrate, court-appointed arbitrator, judge of the State Bar Court, temporary judge, and special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

ADVISORY COMMITTEE COMMENTARY

For the purposes of this Canon, if a retired judge is serving in the assigned judges program, the judge is considered to "perform judicial functions." Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

(Canon 6A amended effective January 1, 2005.)

B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the assigned judges program shall comply with all provisions of this Code, except for the following:

- | | |
|-------|---------------------------------------|
| 4C(2) | Appointment to governmental positions |
| 4E | Fiduciary* activities |

(Canon 6B amended effective January 1, 2005.)

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the assigned judges program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judges Serving on Assignment* promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY

In California, article VI, section 6 of the California Constitution provides that a "retired judge who consents may be assigned to any court" by the Chief Justice. Retired judges who are serving in the assigned judges program pursuant to the above provision

are bound by Canon 6B, including the requirement of Canon 4G barring the practice of law. Other provisions of California law, and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.

D. Temporary Judge*, Referee, or Court-appointed Arbitrator¹

A temporary judge, a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the following Code provisions:

(1) A temporary judge, referee, or court-appointed arbitrator shall comply with Canons 1 [integrity and independence of the judiciary], 2A [promoting public confidence], 3B(3) [order and decorum] and (4) [patient, dignified, and courteous treatment], 3B(6) [require lawyers to refrain from manifestations of any form of bias or prejudice], 3D(1) [action regarding misconduct by another judge] and (2) [action regarding misconduct by a lawyer], when the temporary judge, referee, or court-appointed arbitrator is actually presiding in a proceeding or communicating with the parties, counsel, or court personnel while serving in the capacity of a temporary judge, referee, or court-appointed arbitrator in the case.

(2) A temporary judge, referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) Comply with Canons 2B(1) [not allow family or other relationships to influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified] and (2) [be faithful to and maintain competence in the law], 3B(5) [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex parte communications, except as specified] and (8) [dispose of matters fairly and promptly], 3C(1)[discharge administrative responsibilities without bias and with competence and cooperatively], (2) [require staff and personnel to observe standards of conduct and refrain from bias and prejudice] and (4) [make only fair, necessary, and appropriate appointments];

(b) Not lend the prestige of judicial office to advance his, her, or another person's pecuniary or personal interests and not use his or her judicial title in any written communication intended to advance his, her, or another person's pecuniary or personal interests, except to show his, her, or another person's qualifications;

¹ Reference should be made to relevant commentary to analogous or individual Canons cited or described in this Canon and appearing elsewhere in this Code.

(c) Not personally solicit memberships or donations for religious, fraternal, educational, civic, or charitable organizations from the parties and lawyers appearing before the temporary judge, referee, or court-appointed arbitrator;

(d) Under no circumstance accept a gift, bequest, or favor if the donor is a party, person, or entity whose interests are reasonably likely to come before the temporary judge, referee, or court-appointed arbitrator. A temporary judge, referee, or court-appointed arbitrator shall discourage members of the judge's family residing in the judge's household from accepting benefits from parties who are reasonably likely to come before the temporary judge, referee, or court-appointed arbitrator.

(3) A temporary judge shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge—other than a temporary judge solely conducting settlement conferences—is disqualified to serve in a proceeding if any one or more of the following is true:

(i) the temporary judge has personal knowledge (as defined in Code of Civil Procedure section 170.1(a)(1)) of disputed evidentiary facts concerning the proceeding;

(ii) the temporary judge has served as a lawyer (as defined in Code of Civil Procedure section 170.1(a)(2)) in the proceeding;

(iii) the temporary judge, within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1(a)(2), except that this provision requires disqualification if the temporary judge represented a party in the past five years rather than the two-year period specified in section 170.1(a)(2)) for a party in the present proceeding;

(iv) the temporary judge has a financial interest (as defined in Code of Civil Procedure sections 170.1(a)(3) and 170.5) in the subject matter in the proceeding or in a party to the proceeding;

(v) the temporary judge, or the spouse or registered domestic partner of the temporary judge, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner of such a person is a party to the proceeding or is an officer, director, or trustee of a party;

(vi) a lawyer or a spouse or registered domestic partner of a lawyer in the proceeding is the spouse, former spouse, registered domestic partner, former registered domestic partner, child, sibling, or parent of the temporary judge or the

temporary judge's spouse or registered domestic partner, or if such a person is associated in the private practice of law with a lawyer in the proceeding; or

(vii) for any reason:

(A) the temporary judge believes his or her recusal would further the interests of justice;

(B) the temporary judge believes there is a substantial doubt as to his or her capacity to be impartial; or

(C) a person aware of the facts might reasonably entertain a doubt that the temporary judge would be able to be impartial. Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification;

ADVISORY COMMITTEE COMMENTARY

The application of Canon 6D(3)(a)(iii), providing that a temporary judge is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge has previously represented a party. If time permits, the temporary judge must conduct such an investigation. Thus, if a temporary judge is privately compensated by the parties or is presiding over a particular matter known in advance of the hearing, the temporary judge is presumed to have adequate time to investigate. If, however, a temporary judge is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge may rely on his or her memory to determine whether he or she has previously represented a party.

(b) A temporary judge before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

(c) If the temporary judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement or current employment is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The temporary judge directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral

will be an individual or entity with whom the temporary judge has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

(iii) The temporary judge will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the temporary judge, and among those available for selection is an individual or entity with whom the temporary judge has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

For the purposes of canon 6D(3)(c), the definitions of “participating in discussions,” “has participated in discussions,” “party,” and “dispute resolution neutral” are set forth in Code of Civil Procedure section 170.1(a)(8), except that the words “temporary judge” shall be substituted for the word “judge” in such definitions.

(d) A lawyer is disqualified from serving as a temporary judge in a family law or unlawful detainer proceeding if in the same type of proceeding:

(i) the lawyer holds himself or herself out to the public as representing exclusively one side; or

(ii) the lawyer represents one side in 90 percent or more of the cases in which he or she appears.

ADVISORY COMMITTEE COMMENTARY

Under Canon 6D(3)(d), “one side” means a category of persons such as landlords, tenants, or litigants exclusively of one gender.

(4) After a temporary judge who has determined himself or herself to be disqualified from serving under Canon 6D(3)(a)–(d) has disclosed the basis for his or her disqualification on the record, the parties and their lawyers may agree to waive the disqualification and the temporary judge may accept the waiver. The temporary judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver.

ADVISORY COMMITTEE COMMENTARY

Provisions addressing waiver of mandatory disqualifications or limitations, late discovery of grounds for disqualification or limitation, notification of the court when a disqualification or limitation applies, and requests for disqualification by the parties are located in rule 2.818 of the California Rules of Court. Rule 2.818 states that the waiver must be in writing, must recite the basis for the disqualification or limitation, and must

state that it was knowingly made. It also states that the waiver is effective only when signed by all parties and their attorneys and filed in the record.

(5) A temporary judge, referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) In all proceedings, disclose in writing or on the record information as required by law, or information that the parties or their lawyers might reasonably consider relevant to the question of disqualification under Canon 6D(3), including personal or professional relationships known to the temporary judge, referee, or court-appointed arbitrator that he or she or his or her law firm has had with a party, lawyer, or law firm in the current proceeding, even though the temporary judge concludes that there is no actual basis for disqualification; and

(b) In all proceedings, disclose in writing or on the record membership of the temporary judge, referee, or court-appointed arbitrator, in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation, except for membership in a religious or an official military organization of the United States and membership in a nonprofit youth organization so long as membership does not violate Canon 4A [conduct of extrajudicial activities].

(6) A temporary judge, referee, or court-appointed arbitrator, from the time of notice and acceptance of appointment until the case is no longer pending in any court, shall not make any public comment about a pending or impending proceeding in which the temporary judge, referee, or court-appointed arbitrator has been engaged, and shall not make any nonpublic comment that might substantially interfere with such proceeding. The temporary judge, referee, or court-appointed arbitrator shall require similar abstention on the part of court personnel subject to his or her control. This Canon does not prohibit the following:

(a) Statements made in the course of the official duties of the temporary judge, referee, or court-appointed arbitrator; and

(b) Explanations for public information about the procedures of the court.

(7) From the time of appointment and continuing for two years after the case is no longer pending in any court, a temporary judge, referee, or court-appointed arbitrator shall under no circumstances accept a gift, bequest, or favor from a party, person, or entity whose interests have come before the temporary judge, referee, or court-appointed arbitrator in the matter. The temporary judge, referee, or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge, referee, or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge, referee, or court-appointed arbitrator

of a fee for his or her services rendered or to be rendered shall not be a violation of this Canon.

(8) A temporary judge, referee, or court-appointed arbitrator shall, from time of notice and acceptance of appointment and continuing indefinitely after the termination of the appointment:

(a) Comply with Canons 3(B)(11) [no disclosure of nonpublic information acquired in a judicial capacity] (except as required by law); and

(b) Not commend or criticize jurors sitting in a proceeding before the temporary judge, referee, or court-appointed arbitrator for their verdict other than in a court order or opinion in such proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(9)(a) A temporary judge appointed under rule 2.810 of the California Rules of Court, from the time of appointment and continuing indefinitely after the termination of the appointment, shall not use his or her title or service as a temporary judge as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office, in an advertisement about the lawyer's law firm or business, or on a letterhead, business card, or other document that is distributed to the public identifying the lawyer or the lawyer's law firm.

(b) This Canon does not prohibit a temporary judge appointed under rule 2.810 of the California Rules of Court from using his or her title or service as a temporary judge on an application to serve as a temporary judge, including an application in other courts, on an application for employment or for an appointment to a judicial position, on an individual resume or a descriptive statement submitted in connection with an application for employment or for appointment or election to a judicial position, or in response to a request for information about the public service in which the lawyer has engaged.

(10) A temporary judge, referee, or court-appointed arbitrator shall comply with Canon 6D(2) until the appointment has been terminated formally or until there is no reasonable probability that the temporary judge, referee, or court-appointed arbitrator will further participate in the matter. A rebuttable presumption that the appointment has been formally terminated shall arise if, within one year from the appointment or from the date of the last hearing scheduled in the matter, whichever is later, neither the appointing court nor counsel for any party in the matter has informed the temporary judge, referee, or court-appointed arbitrator that the appointment remains in effect.

(11) A lawyer who has been a temporary judge, referee, or court-appointed arbitrator in a matter shall not accept any representation relating to the matter without the informed written consent of all parties.

(12) When by reason of serving as a temporary judge, referee, or court-appointed arbitrator in a matter, he or she has received confidential information from a party, the person shall not, without the informed written consent of the party, accept employment in another matter in which the confidential information is material.

ADVISORY COMMITTEE COMMENTARY

Any exceptions to the Canons do not excuse a judicial officer's separate statutory duty to disclose information that may result in the judicial officer's recusal or disqualification.

(Canon 6D amended effective January 1, 2007; adopted effective January 15, 1996; previously amended effective April 15, 1996, March 4, 1999 and July 1, 2006.)

E. Judicial Candidate

A candidate* for judicial office shall comply with the provisions of Canon 5.

F. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Canons 4D(2) and 4F and shall comply with these Canons as soon as reasonably possible and shall do so in any event within a period of one year.

ADVISORY COMMITTEE COMMENTARY

If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4F, continue to serve as fiduciary* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Canon 4D(2), continue in that activity for a reasonable period but in no event longer than one year.*

(Canon 6G repealed effective June 1, 2005; adopted December 30, 2002.)

H. Judges on Leave Running for Other Public Office

A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this Code, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2)—Lending the prestige of judicial office to advance the judge's personal interest

2B(4)—Using the judicial title in written communications intended to advance the judge's personal interest

4C(1)—Appearing at public hearings

5—Engaging in political activity (including soliciting and accepting campaign contributions for the other public office)

ADVISORY COMMITTEE COMMENTARY:

These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this Code will become applicable at the time a judge resumes his or her position as a judge.

Conduct during elections for judicial office is governed by Canon 5.

(Canon 6H adopted effective January 1, 2005.)

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TITLE 2. Government of the State of California
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PART 1. State Departments and Agencies
CHAPTER 4.5. Administrative Adjudication: General Provisions
ARTICLE 7. Ex Parte Communications

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 11430.10 (2004)

§ 11430.10. Ex parte communications

(a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

NOTES:

HISTORICAL DERIVATION:

Former Gov C § 11513.5, as added Stats 1986 ch 899 § 2.

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.

NOTE-

Stats 1995 ch 938, in part, provides:

SEC. 98. (a) Except as provided in subdivision (b), this act shall be operative on July 1, 1997.

(b)(1) Sections 9, 9.2, 9.4, 9.6, 15, 15.1, 15.3, 15.5, 15.6, 15.7, 15.8, 24, 57, 58, 64, 64.4, 65, 65.4, 71, 72, 72.4, 78, 82, 95.5, 97.1, and 97.2 shall be operative on January 1, 1996.

OFFICIAL COMMENT:

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Cal Gov Code § 11430.20 (2004)

§ 11430.20. Permissible ex parte communications

A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.

For operation of act, see the 1995 Note following Gov C § 11430.10.

NOTES:

OFFICIAL COMMENT:

LAW REVISION COMMISSION COMMENTS:

1995--Subdivision (a) of Section 11430.20 is drawn from former Section 11513.5(a) and (b). This provision also applies to the agency head, or other person or body to which the power to hear or decide is delegated. See Section 11430.70 (application of provisions to agency head or other person).

This article is not intended to preclude communications made to a presiding officer or staff assistant regarding noncontroversial matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and calendaring and status discussions. Subdivision (b). Such topics are not part of the merits of the matter, provided they appear to be noncontroversial in context of the specific case.

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GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 11430.30 (2004)

§ 11430.30. Permissible ex parte communication from agency that is party

A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

- (a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.
- (b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.
- (c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:
 - (1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.

For operation of act, see the 1995 Note following Gov C § 11430.10.

LEXSTAT CAL GOV CODE 11430.40

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GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 11430.40 (2004)

§ 11430.40. Disclosure of communication received while proceeding is pending

If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.
For operation of act, see the 1995 Note following Gov C § 11430.10.

NOTES:

HISTORICAL DERIVATION:

Former Gov C § 11513.5, as added Stats ch 899 § 2.

OFFICIAL COMMENT:

LAW REVISION COMMISSION COMMENTS:

1995--Section 11430.40 is drawn from former Section 11513.5(c), but is limited to communications received during pendency of the proceeding. See also 1981 Model State APA 4-213(d). This provision also applies to the agency head, or other person or body to which the power to hear or decide is delegated. See Section 11430.70 (application of provisions to agency head or other person). For the purpose of this section, a proceeding is pending on the earlier of issuance of an agency pleading or submission of an application for an agency decision. Section 11430.10(c) (ex parte communications prohibited).

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GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 11430.50 (2004)

§ 11430.50. Communication in violation of provisions

(a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

NOTES:

HISTORICAL DERIVATION:

Former Gov C § 11513.5, as added Stats 1986 ch 899

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Cal Gov Code § 11430.60 (2004)

§ 11430.60. Prohibited communication as grounds to disqualify presiding officer

Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

NOTES:

HISTORICAL DERIVATION:

Former Gov C § 11513.5, as added Stats 1986 ch 899

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.

For operation of act, see the 1995 Note following Gov C § 11430.10.

OFFICIAL COMMENT:

LAW REVISION COMMISSION COMMENTS:

1995-- Section 11430.60 is drawn from former Section 11513.5(e). This provision also applies to the agency head, or other person or body to which the power to hear or decide is delegated. See Section 11430.70 (application of provisions to agency head or other person).

Section 11430.60 permits the disqualification of a presiding officer if necessary to eliminate the effect of an ex parte communication.

In addition, this section permits the pertinent portions of the record to be sealed by protective order. The intent of this provision is to remove the improper communication from the view of the successor presiding officer, while preserving it as a sealed part of the record, for purposes of subsequent administrative or judicial review. Issuance of a protective

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GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 11430.70 (2004)

§ 11430.70. Agency head delegated to hear or decide proceeding

(a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.

For operation of act, see the 1995 Note following Gov C § 11430.10.

NOTES:

OFFICIAL COMMENT:

LAW REVISION COMMISSION COMMENTS:

1995-- Under Section 11430.70, this article is applicable to the agency head or other person or body to which the power to act is delegated. For an additional limitation on communications between the presiding officer and agency head, see Section 11430.80.

Section 11430.70 applies only in administrative adjudication proceedings; it does not apply in rulemaking proceedings. Cf. Sections 11405.20 (adjudicative proceeding defined); 11405.50 (decision defined). See also Sections 11400 (administrative adjudication provisions); 11410.10 (application of chapter). While subdivision (b) permits ex parte communications to the agency head in an individualized ratemaking proceeding, it does not require an agency

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Cal Gov Code § 11430.80 (2004)

§ 11430.80. Communication between presiding officer and agency head delegated to hear proceeding

(a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.

HISTORY: Added Stats 1995 ch 938 § 21 (SB 523), operative July 1, 1997.

EDITOR'S NOTES:

For operation of chapter, see Gov C § 11400.10.

For operation of act, see the 1995 Note following Gov C § 11430.10.

NOTES:

OFFICIAL COMMENT:

LAW REVISION COMMISSION COMMENTS:

1995--Section 11430.80 is a special application of a provision of former Section 11513.5(a), which precluded a presiding officer from communicating with a person who presided in an earlier phase of the proceeding. Section 11430.80 extends the ex parte communications limitation of Section 11430.70 (application of provisions to agency head or other person) to include communications with an agency or non-agency presiding officer as well. This limitation does not apply where the presiding officer does not issue a decision to the parties, but merely prepares a recommended decision for the agency head or other person or body to which the power to decide is delegated.

This section enforces the general principle that the presiding officer should not be an advocate for the proposed decision to the agency head, including a person or body to which the power to act is delegated. See Section 11405.40

Alice Perez Response to Senate Rules Committee Questions

1. Brief statement outlining goals you hope to accomplish while serving on the California Student Aid Commission.

Being the mother of five children who have attended school in California (and are now in college), I have a vested interest in ensuring that our children receive a world-class education that makes them competitive on a local and global basic. We need to have accountability in place for our educators and provide them with the resources necessary to ensure that our children and future leaders have the best education California can provide. The California Student Aid Commission provides valuable resources necessary for children that may not otherwise have an opportunity to further their education. I seek to ensure that all students have an opportunity to further their education either through traditional college or vocational schools. Fostering collaborative relationships with the educators and providing students access to informant is one of the goals I have.

Additionally, I would like to ensure that the items in the BSA audit are corrected. In particular, clarity of working relationships between leadership at the California Student Aid Commission and EdFund and an Operating Agreement that incorporates appropriate over site based on defined roles and Defined Incentive Compensation linked to specific and measurable performance goals. I am focused on ensuring that leadership is accountable for providing transparent information and engaging in open honest dialog that fosters collaboration amongst both organizations and our partners. I have thus far been engaged in specifically addressing the Composition of EdFund Board members, Collection of outstanding balances due by Department of Education for VFA, EdFund Compensation Payout, and the Performance Evaluation of CSAC Executive Director with specific goals for 2007, as well as many other areas of the BSA Audit.

2. Is the Commission developing any policies that address the rising costs of attending colleges in California, especially the growth of non-fee related expenses? What policy changes might CSAC consider in response to this growing need?

The Commission has not developed any specific policies to address the rising costs of attending college, however the commission has supported legislation to increase access and opportunity for low and middle income students such as, 1) Increasing the Cal Grant B Access Stipend, 2) Providing four years of Tuition Assistance to Cal Grant B Students, 3) Doubling the number of competitive Cal Grant (which serves "non-traditional" applicants, i.e., students not moving directly into college from high school.)

3. How does the Commission determine the student budget for attending a California college or university? How does this budget keep pace with the growth of college-related expenses such as books and supplies?

Senate Rules Committee

MAR 09 2007

Appointments

On an annual basis the Commission adopts a recommended student budget as a guideline for schools. This takes into consideration institutional charges, books, food and housing, transportation and personal expenses unique to schools and cost of living based on school location. The commission uses updated program costs provided by schools and data gathered by the most recent SEARS as well as forecast changes in the California Consumer Price Index in non-survey years. Financial need is calculated for each Applicant.

4. When developing the student budget for determining financial aid, does the Commission take into account the different costs of living in various parts of the State?

The Commission considers the institutional charges, which may reflect regional cost of living expenses; institutions may adjust the student budget based on circumstances that are unique to the institution and locale. Cost differential based on regional differences throughout the state are not considered.

5. What is the Commission doing to influence the development of federal financial aid policies currently under review in Congress that have a direct impact on California students?

The commission staff and EDFUND Governmental Relations staff meet with Congressional aides and staff to educate them on the Commission/EDFUND programs as well as advocate for increases to the Pell Grant award levels. The Commission staff also works with several national organizations such as the National Association of State Student Grant and Aid Programs (NASSGAP), the National Association of Student Financial Aid Administrators (NASFAA) and the National Council of Higher Education Loan Programs (NCHELP) to advocate for improvements and additions to federal programs.

6. What are the Commission's top priorities in advocating for changes in federal financial aid policy?

The Commission works to protect, maintain, and increase the availability of financial aid through programs including the Cal Grant program and the Federal Family Education Loan Program. One of the on-going priorities is to negotiate with the United States Department of Education (USED) for a fair and appropriate Voluntary Flexible Agreement (VFA) which will allow the Commission and EDFUND to continue to work with USED to improve the revenue stream to the Commission from the loan program, and to the USED by leveraging resources to promote program efficiency.

7. How does CSAC measure the effectiveness of its financial aid programs? How do you evaluate this effectiveness?

The effectiveness of CSAC's programs are measured by evaluating the program's use. Annually the Commission reviews the awards offered to students and the awards paid to

students across all California financial aid programs. There are several reports released by the Commission that outline the effectiveness of Cal Grants and other financial aid programs available to California students. I measure the effectiveness of the financial aid programs by the number of students applying for awards, that qualify which shows a need for the program, and that number of students that receive awards and complete their education. For many students these programs make it possible for them to complete the next level of education.

8. As a CSAC Commissioner, do you have specific policy recommendations for making improvement to the Cal Grant A and B programs to serve California students more effectively?

We need to ensure the awards are adequate to minimize the cost of obtaining postsecondary education for students and the number of awards granted reflects the number of applicants. We need to ensure low-cost loans are available to meet the financial needs of students.

8. Given the recent state policy discussions about the need to enhance career technical education, should the Cal Grant C program be strengthened? If so, how?

I believe the Cal Grant C program should be strengthened by increasing the number of authorized awards and by also increasing the award amounts. The cost of books and tuition for many vocational programs in California far exceeds the maximum entitlement amount. Additionally the number of awards granted has not been increased since the inception of the program.

9. What CSAC-sponsored outreach activities do you believe are most effective in advising prospective college students about the Cal Grant and other financial aid that is available to low- and moderate-income students? How do you evaluate the effectiveness of CSAC's outreach to prospective students?

In my opinion it is necessary to have outreach programs that reach the students and their parents directly. The three most effective programs would be, the Cal SOAP program which regularly schedules informational sessions and workshops at elementary and secondary schools to inform parents and students about financial aid availability starting at a very early age, The *Public Awareness Campaign* which provides educational information and assistance with understanding how to apply for and receive college financial aid to high school students and their parents. It holds a series of workshops and seminars that students and their parents can attend.

California Cash for College provides free in-person help through workshops held in various languages to First Generation College bound students. The effectiveness of the last two programs is evaluated by the number of students that attend the workshops that actually submit a completed FAFSA.

11. What policy changes do you advocate in response to the concerns raised in the Bureau of State Audits and the Legislative Analyst reports in 2006?

The key issue that needs to be clarified is roles and responsibilities before any policy changes can be recommended. Many of the issues in the audit are a result of perceived responsibility parameters. In my opinion if leadership from both organizations worked in a collaborative manner with transparency many of the issues would not exist. As staff is directed to work in a collaborative manner we have approved a 2006-07 loan program business plan and a balanced 2006-07 Student Loan Operating budget.

The commission has taken no action in response to the Legislative Analyst reports since it echoes some of the basic governance concerns raised in the BSA report, but also recommends that the administration of the grant and loan programs should be administered by one non-state entity. As roles are clarified we can then address the future recommended structure of the organizations and the best changes to ensure check and balances are present while meeting the operational needs and purposes of both organizations.

12. How do you propose improving the relationship between CSAC and EDFUND?

Defining roles and responsibilities would help outline what each is accountable for thus improve relationships. In addition, regular communication, transparency and commitment to resolve issues between management of each of the organizations (opposed to depending on Commissioners to resolve issues) are critical to the success of both organizations. Regularly scheduled meetings between key staff members will also improve relationships.

13. What changes, if any, would you make to strengthen the organizational structure of the Commission and EDFUND?

There is a consulting firm currently working on recommendation that would help define roles and responsibilities. Once this is provided we could better determine the appropriate recommendations. In the absence of this, regular communication, transparency and commitment to resolve issues between management of each of the organizations (opposed to depending on Commissioners to resolve issues) is critical to the success of both organizations.

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

March 2, 2007

John A. Avila

Dear Mr. Avila:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, March 28, 2007. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by March 22, 2007.

We would also like to receive an updated Form 700, Statement of Economic Interest, by March 22nd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?*

Background

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. It consists of 14 members appointed by the governor plus the attorney general. The POST organization, with more than 130 staff members, functions under the direction of an executive director appointed by the commission. POST coordinates a comprehensive training program, with more than 4,300 certified courses.

POST is seeking to enhance its services. One goal of the commission is to develop a comprehensive plan to address recruitment issues. This comes as

California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*
3. *The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

Legislation

SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law-enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.

4. *Please describe the commission's progress toward meeting these requirements.*

Employment

The commission's strategic goals state: "The costs associated with sub-par employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."

5. *What steps have you taken to help departments weed out potentially sub-par employees before they are hired? What sort of training is available on this topic?*

Parole Reentry

The California Department of Corrections has begun to place a renewed emphasis on transitioning parolees back to their home communities and helping them find employment and housing.

6. *Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

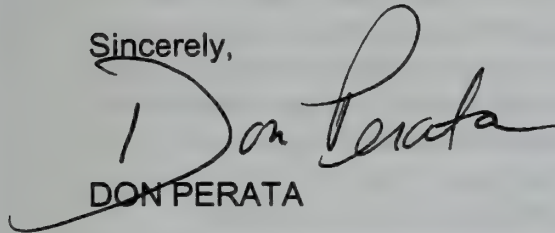
Web-based Training

One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

7. *What progress have you made toward this goal?*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata". The signature is fluid and cursive, with a large initial "D".

DON PERATA

DP:MG

March 14, 2007

Chairman Don Perata
Senate Rules Committee
Room 420, State Capitol
Sacramento, Ca 95814

Dear Chairman Perata:

Thank you for the opportunity to address the Senate Rules Committee regarding my confirmation hearing to the Peace Officer Standards and Training. I am very honored to be a part of such a fine organization as POST. Throughout California, men and women of Law Enforcement look up to the Peace Officer Standards and Training to provide the highest level of training not only in California but in the United States.

1. I have been a Law Enforcement Officer for 25 years and I have seen the importance that Post plays regarding the everyday life of an Officer. I fully realize how important it is to set standards for officers to adhere to and goals for them to strive for. As a Commissioner I hope to raise the bar for officers and to have a greater impact on the role they play within the community. As a Commissioner I can make sure that officers are afforded the finest in education related to law Enforcement. I want to be able to keep the standards high and the reputation of California's Law Enforcement community the best in the United States.
2. POST plays a large part in regards to recruitment of Law Enforcement personnel. While POST sets the standards, it also helps the departments to maintain a high level of proficiency within the Law Enforcement community. POST has provided training from within the department to assist officers in regards to writing skills and sentence structure and various other support skills. POST understands the issues of recruitment and will conduct a survey to assess those issues and respond to them.
3. POST is still considering raising entry-level qualifications to become an officer while being cognoscente of the impact it may play on recruitment. I believe that POST can raise the entry-level standards without having a negative impact on recruitment. We must however assist agencies to promote this higher standard by providing adequate educational incentives to perspective officers. This may include educational incentives and opportunities to expand their education within a specified probationary period. The world is changing and becoming more technological. The Law Enforcement community must change with it.

Senate Rules Committee

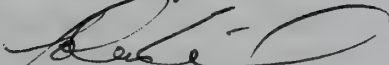
March 14, 2007

Appointments

4. POST has done an outstanding job to meet the requirements of SB1234. POST has designed an 8-hour course with certified instructors from the Museum of Tolerance, in Southern California. The Hate Crime curriculum was updated to include the AG's opinion in 2005. At this time, there is a model hate crime policy for law enforcement being developed which will be presented at the July Commission meeting.
5. In 2006, the Commission adopted a Background Investigator Manual and Personal History Statement. In 2003 POST updated the oral interview process which includes traits as: life experience, problem solving, communication skills, interest/motivation, interpersonal skills and community involvement/awareness. POST staff develops and continuously updates 27 mandatory, must-pass Knowledge tests including comprehensive Mid-term and Final Examinations.
6. Last week I attended a meeting of the California Department of Corrections and Rehabilitations Consortium. This meeting was attended by Cal Chiefs, Cal Sheriffs, CDAA and CNOA. One of the topics of conversation was the re-entry program and how we could better serve the community and the prison population. POST has developed courses specific to the needs of both law enforcement and the paroles once they are discharged. Courses include "Parolee Contacts" which has expanded to over nine presenters.
7. This is an area that POST excels in. POST has established the POST Learning Technology Resource Center which is an interactive CD-ROM. There are several training resources available such as "Learners first", communication. Law Enforcement Response to Terrorism, First Aid and many other sources. POST sets as the number one training aid for Law Enforcement Officers. With the increase in the use of the Learning Portal, POST will continue to lead the United States in Law Enforcement education.

I am very proud to up for confirmation to such a fine organization as POST. I want to thank Chairman Perata and the Senate Rules Committee for their time, effort and consideration.

Sincerely,



John Avila

[The body of the page contains several paragraphs of text that are extremely faded and illegible. The text appears to be organized into sections, possibly separated by headings or subheadings, but the specific content cannot be discerned.]

CALIFORNIA LEGISLATURE

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VICE-CHAIR

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NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

March 2, 2007

Hon. Robert G. Doyle
Riverside County Sheriff-Coroner
Post Office Box 512
Riverside, CA 92502

Dear Sheriff Doyle:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, March 28, 2007. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by March 22, 2007.

We would also like to receive an updated Form 700, Statement of Economic Interest, by March 22nd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?*

Background

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. It consists of 14 members appointed by the governor plus the attorney general. The POST organization, with more than 130 staff members, functions under the direction of an executive director appointed by the commission. POST coordinates a comprehensive training program, with more than 4,300 certified courses.

California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*
3. *The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

Legislation

SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law-enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.

4. *Please describe the commission's progress toward meeting these requirements.*

Employment

The commission's strategic goals state: "The costs associated with sub-par employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."

5. *What steps have you taken to help departments weed out potentially sub-par employees before they are hired? What sort of training is available on this topic?*

Parole Reentry

The California Department of Corrections has begun to place a renewed emphasis on transitioning parolees back to their home communities and helping them find employment and housing.

6. *Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

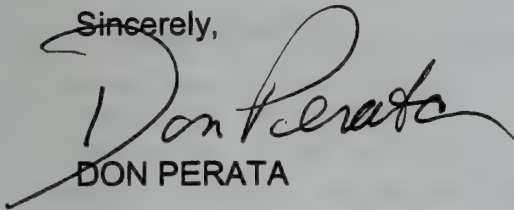
Web-based Training

One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

7. *What progress have you made toward this goal?*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata". The signature is fluid and cursive, with a large initial "D".

DON PERATA

DP:MG

RIVERSIDE COUNTY

BOB DOYLE, SHERIFF



ns
Sheriff

P.O. BOX 512 • RIVERSIDE, CALIFORNIA 92502 • (951) 955-2400 • FAX (951) 955-2428

March 14, 2007

Chairman Don Perata
State Capitol, Room 420
Sacramento, CA 95814

Senate Rules Committee

RE: Requested Information for Confirmation Hearing

Appointments

Dear Chairman Perata,

It is a pleasure to provide you with the following statement outlining my short and long term goals for the commission.

The Commission on Peace Officer Standards and Training must continue to be the leading organization to provide quality training to peace officers throughout California.

First, the training needs to reflect current conditions that are impacting our communities and law enforcement professionals.

Second, we must strive to elevate training standards, ensuring that our officers are the best they can be.

Third, we must provide the highest quality training, and most realistic training that is possible.

Fourth, as the leading organization in law enforcement training, it is important that we listen to our law enforcement professionals and maximize the services that are needed by them. We must be comfortable with change and have the ability to adapt.

Finally, we must insure that we are in partnership with law enforcement agencies, constantly building coalitions and cooperative efforts. This will ensure that the citizens of California have the best trained law enforcement personnel available.

Sincerely,

A handwritten signature in dark ink, appearing to read "B Doyle".

BOB DOYLE, SHERIFF-CORONER

BD: nt



MARIN COUNTY SHERIFF'S OFFICE

3501 Civic Center Drive, Room 145, San Rafael, CA 94903

ROBERT T. DOYLE

Sheriff

DENNIS FINNEGAN

Undersheriff

March 20, 2007

The Honorable Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

AREA CODE 415

24-HOUR NUMBER
499-7233

FAX
507-4126

Dear Chairman Perata:

Thank you for the opportunity to share my views about the Police Standards and Training (POST) organization and the work of the commission.

ADMINISTRATION
499-7250

CIVIL
499-7282

As you know, I was appointed nearly a year ago by Governor Schwarzenegger and represent the California State Sheriffs' Association. Since my appointment I have attended four scheduled commission meetings and I have been impressed with the insight and dedication of the POST staff. The residents of the State of California are very fortunate that POST exists to provide selection and basic and advanced training.

COMMUNICATION
SERVICES
499-7243

EMERGENCY
SERVICES
499-6584

Preparing my responses required review and discussion with POST staff because some of the topic areas were implemented before my appointment and some are still a work in progress.

INVESTIGATIONS
499-7265

1. Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?

JAIL
499-6655

I have had the opportunity to review the POST Commission's Strategic Plan. The original plan was adopted in 1997, and it is updated every two years. The strategic plan updates include input from the various law enforcement stakeholders, commissioners and POST staff. There are three goals contained in the strategic plan. Goal 1, raise the bar on selection and training standards. Goal 2, improve quality and impact of training and Goal 3, enhance POST services. I support these goals and

MAJOR CRIMES
TASK FORCE
884-4878

PATROL
499-7233

RECORDS
499-7284

Senate Rules Committee WARRANTS
499-7297

"In Partnership with our Communities"

www.marinsheriff.org

www.co.marin.ca.us

Appointments

Received 03-20-2007 02:15pm From-4155074126

To-SENATE RULES COMMITTEE Page 002

add a fourth. With continued and thorough deliberation and planning develop methods to project future training needs.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*

Since 1990, POST has conducted a number of recruitment symposiums culminating in a *Peace Officer Recruitment and Retention Best Practices Update* in April of 2006. Additionally, POST staff will recommend to the long range planning committee and the commission at the Commission's April meeting that a statewide survey be administered to local law enforcement to assess POST's perceived role in providing solutions. The outcome of the survey will be reviewed by staff and the commission to better assess what POST's commitment will be. I support the commission's effort but I believe the primary role of POST is to survey law enforcement professionals, to gather information about the best practices in recruitment and it never hurts to bring the professionals together so we can personally share and exchange ideas with our colleagues. Substance is always important but in recruitment you cannot forget about form and perception. If the organization doesn't present itself well and use the personnel who have a passion for recruitment, it would be difficult to be successful.

3. *The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

The strategic plan addressed the feasibility of raising entry level standards for peace officers, which include raising educational requirements – reading and writing testing and establishing basic academy report writing standards. Although I would support raising entry level standards because I believe the public deserves the best that we can give them, I also recognize and am sympathetic to the larger agencies, particularly those in our urban centers that could be impacted. We are currently in a time when nearly every agency is looking for qualified applicants so reducing the available pool would not be a sound design. I believe there is a consensus on the commission to maintain the current standard but allow regional training centers to increase entry level standards and academy standards supported by client agencies.

4. Please describe the commission's progress toward meeting these requirements.)

In 2002, POST designed an eight-hour course that meets the requirements of Penal Code Section 13519.6. The course was updated in 2006, to meet the requirements of SB 1234, in collaboration with subject matter experts and the Senate Office of Research. Additionally a model hate crime policy for law enforcement is being developed at this time and will be presented at the July commission meeting. The guideline document encourages each agency to develop its own hate crime policy and describes the components that should be included in any such policy.

5. *What steps have you taken to help departments weed out potentially sup-par employees before they are hired? What sort of training is available on this topic?*

It is POST's responsibility to develop minimum selection standards. Based on the POST standards a completed applicant background would include employment history, personal references, applicant's capability with POST job determinations, polygraph (optional,) psychological and medical examinations. Additionally, POST offers a 40 hour background investigator's course, continual updates to the background and oral investigators manual. Also, at our April meeting, the commission will review the viability of administering pre-employment personality assessment of peace officer applicants. I believe the POST standards are valuable and pertinent and if applied properly, unqualified or unsuitable candidates are easily detected.

6. *Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

POST presently offers a two hour telecourse entitled, *Parole and Local Law Enforcement*. The primary focus of the course is to educate police officers about the prison culture of parolees, parole psychology, interview techniques and the course of action to take when a parolee is suspected of violating the conditions of his or her parole. The reentry facility concept is contained in Governor Schwarzenegger's prison reform package. The governor's proposal would have state prisoners serving three years or less remain in community reentry facilities rather than state prison. Even though our line officers work with parole officers every day in dealing with parolees in the community, I don't believe POST has had time to evaluate a course instruction for managers or line officers. I will discuss this matter with POST staff.

7. What progress have you made toward the goal to develop a distance learning plan for the deliver of web-based training?

POST's Learning Technology Resources Center (LRTC) beginning in 1991, developed computer based training programs, first on interaction videodiscs and then on CD-ROM. The LRTC is now developing internet based training and performance tools for California law enforcement accessed via the POST Learning Portal. Some examples of the resources available on the Learning Portal are:

- Learners First: Facilitation Skills for Learner-Centered Instruction (CPT credit)
- Communication: Keeping Your Edge (CPT credit)
- Law Enforcement Response to Terrorism (CPT credit)
- First Aid/CPR (Being updated)
- Search Warrant Development Job Aid (Being developed)
- Audio broadcasts of presentations made during the 2006 Recruiters Workshop
- Various publications
- PowerPoint presentations used in several training courses for peace officers and dispatchers


There are some obvious advantageous to on line training:

- 24 hour access
- Small and Rural agencies have access to needed training when they are unable to release people for offsite training and
- Savings in travel and course presentation

Comments by users have been positive with interest for expanding training available on the Learning Portal. I believe that there is interest by the commission to expand online training. POST's plan to establish an advisory council to help staff determine an online plan for training. As this develops the commission will also need to address funding for this effort and increase the staffing level devoted to the Learning Portal.

If you have any further questions before the confirmation hearings, please feel free to contact me.

Sincerely,



ROBERT T. DOYLE
SHERIFF

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

March 23, 2007

Hon. Don Perata
Senate Rules Committee Chairman
California State Legislature
State Capitol
Sacramento, California 95814

Senate Rules Committee

MAR 2 - 2007

Dear Senator Perata:

Appointments

Enclosed are questions and responses in connection with my upcoming confirmation hearing for the Commission on Peace Officer Standards and Training. Thank you in advance for your consideration.

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?**

POST is fortunate to have the solid foundation of its updated Strategic Plan, with clearly-defined goals from which commissioners can work. While the goals are appropriately focused on raising the bar on selection and training standards, improving the quality and impact of training, and enhancing POST services, as a member of the commission I would advance those goals by focusing on additional issues. Specifically, I would set minimum selection and training standards for California law enforcement. I would also address the serious problem of recruitment and retention of peace officers across the state. In doing so, I would emphasize the importance of reaching out to diverse populations who are often under-represented. I would also encourage the Executive Director of POST to augment and integrate the agency's certified courses with training on community-oriented policing and problem-solving.

- 2. California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement. Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?**

I agree with the assessment by POST that local law enforcement is currently in a statewide crisis when it comes to recruiting qualified candidates to fill critical vacancies. POST is on the right track in developing a comprehensive plan for addressing this issue. I support the idea of a workshop specifically for law enforcement and human resource executives at small to medium-sized agencies. In addition, I recognize and embrace the role of my own agency to publicize the

03/23/2007 12:03 FAX 6192371351 003/003

need for police personnel. My office is already steering youth toward careers in law enforcement through a diversity initiative we implemented earlier this year. Minority prosecutors and investigators in the San Diego District Attorney's Office are presenting their respective professional choices to young people, encouraging them to consider a career in law enforcement. There is room for an even wider role by my agency by reaching out to schools and youth-oriented organizations.

3. *The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

The Commission continues to consider raising entry-level qualifications to become a peace officer. POST must be cautious about raising these requirements in the face of recruitment issues. It's a delicate balancing act between making sure the 'best and the brightest' are recruited into law enforcement, and not contributing to the serious and on-going problem of recruitment and retention. Every proposal when it comes to raising qualifications must be weighed against the potential impact these standards may have on recruitment. At the same time, that should not stop us from striving to increase the quality of applicants.

4. *SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the Commission is required to include in its hate crime curriculum, requires the Commission to develop and encourage all law-enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements. Please describe the commission's progress toward meeting these requirements.*

I believe POST should be proactive in encouraging agencies to adopt formal policies on hate crime by providing them with a protocol template. POST is on its way to doing that, having designed an eight-hour course meeting the requirements of Penal Code Section 13519.6. A Telecourse has also been developed, which was updated last year. In addition, a guideline document is being updated and a model hate crime policy for law enforcement is being developed at this time. The guideline document encourages each agency to develop its own hate crime policy and describes the components that should be included in any policy.

5. *The Commission's strategic goals state: "The costs associated with sub-par employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and a public safety standpoint." What steps have you taken to help departments weed out sub-par employees before they are hired? What sort of training is available on this topic?*

POST has been aggressive about training departments on effective background investigations. Last year, the Commission adopted a redesigned Background Investigator Manual and Personal History Statement to improve the accuracy, completeness, and consistency of background investigations throughout the State. Since poor report quality is one of the primary contributors to sub-par peace officer performance, the Commission has directed staff to study the feasibility

of establishing a statewide writing standard in the Basic Course. Next month, the Commission will consider developing a pre-employment personality assessment for peace officer applicants. Using five personality traits has been found to be highly predictive of one's ability to function effectively in a law enforcement environment. In addition, leadership, ethics and community policing, and problem-based learning have all been integrated into the Basic Course.

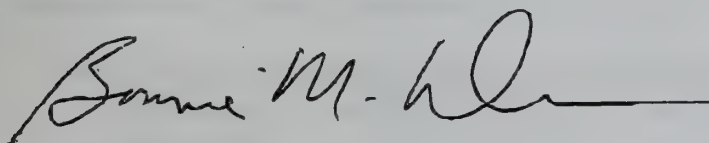
6. *The California Department of Corrections has begun to place a renewed emphasis on transitioning parolees back to their home communities and helping them find employment and housing. Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

It's clear that POST needs to develop more training on reentry programs. Law enforcement should be at the forefront of public safety and problem-solving and needs to be a partner in reducing recidivism. As you may know, studies show 66 to 70% of California parolees return to prison within 2 years of their release from prison. Currently, nine POST presenters conduct a course entitled "Parolee Contacts," teaching officers the law as it relates to dealing with field encounters with parolees. It also educates officers about prison gang culture, parolee psychology, and interview techniques. SB 618 is a good example of how recidivism is being addressed inside the prisons and at the time of reentry. Law enforcement officers need to be familiar with, and included in the development of SB 618 programs in their jurisdictions and how it may affect their contact with parolees at reentry facilities. POST can, and should develop training in this area.

7. *One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training. What progress have you made toward this goal?*

POST has set high standards for online training and continues to be a leader in this area, in spite of limited staff and budget constraints. Currently the POST Learning Portal hosts instructor and law enforcement resources, discussion groups and training courses for more than 9,000 registered users. Some of the Web-based technologies that merit further consideration include natural language interaction, serious game design, modeling and simulation in a 3-D environment. However, it is clear that in order to meet demand for more online training, a consistent funding source needs to be identified, as well as a commitment to sufficient personnel and resources.

Sincerely,



BONNIE M. DUMANIS
SAN DIEGO COUNTY DISTRICT ATTORNEY

Enclosure: Form 700, Statement of Economic Interest

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF THE HISTORY OF ARTS
AND ARCHITECTURE
AND THE MUSEUM OF ART AND ARCHITECTURE
1155 EAST 58TH STREET, CHICAGO, ILL. 60637
TEL. (312) 937-1234

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF THE HISTORY OF ARTS
AND ARCHITECTURE
AND THE MUSEUM OF ART AND ARCHITECTURE
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1155 EAST 58TH STREET, CHICAGO, ILL. 60637
TEL. (312) 937-1234

FLOYD R. HAYHURST

March 22, 2007

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

Thank you for your letter of March 2, 2007, requesting my response to questions regarding my appointment to the POST Commission. My responses are listed below. Please feel free to contact me at any time at (213) 749-1020.

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the Commission?*

Not enough of our state's bright, young professionals are pursuing a career in law enforcement. Police and sheriff's departments are competing against each other for the limited number of qualified recruits. If this situation does not change, our departments will continue to be chronically understaffed, compromising our quality of services.

My primary goal as a POST member is to help facilitate recruiting efforts from the perspective of organized labor. For nearly twenty years, the POST Commission has lead the way, providing key research and recommendations to law enforcement agencies on this issue. This is vitally important work I hope to continue.

- 2. Please spell out the role the Commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*

The problem of recruiting and retaining adequate numbers of qualified personnel is well established. There are simply not enough young people deciding on a career in law enforcement.

Senate Rules Committee

MAR 21 2007

Appointments

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March 22, 2007
Honorable Don Perata
Page two

The role the Commission is playing to help departments recruit qualified candidates primarily involves providing local law enforcement agencies with potential solutions that will increase the pool of qualified potential candidates for open positions.

3. *The Commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

The Commission's strategic plan includes a list of objectives, including new standards for entry level peace officers. It is my belief that the quality of services would improve if our entry level standards required basic testing for report writing and cognitive assessments prior to entry into any police academy. These objectives have been deleted because of the negative impact the requirements would have on the ability of law enforcement agencies to recruit candidates into their academies. The exact and eventual impact of these new pre-academy standards is unknown because higher standards will reduce academy class size at the start, but many increase the percentage of recruits who successfully complete training. The Commission has given staff direction to study the feasibility of these new standards, and to be conscious of the potential impact these standards may have on recruitment.

4. *Please describe the Commission's progress towards meeting these requirements [as outlined in SB 1234 (Kuehl), Chapter 700, Statutes of 2004].*

The current policy established by the Commission regarding hate crimes includes nine guidelines, in accordance with SB 1234, and encourages local law enforcement agencies to establish their own policy, describing the components that should be included in an effective policy.

The Commission has also developed an eight-hour course that provides extensively detailed curriculum in conformity to PC Section 13519.6. Facilities are certified to provide the eight-hour course at two locations; one at the Simon Weisenthal Center and one at Napa Valley College.

5. *What steps have you taken to help departments weed out potentially sub-par employees before they are hired? What sort of training is available on this topic?*

From a labor perspective we want to make certain that employees designated as "sub-par" are not suffering from poor supervisory performance or lack of proper training. To that end, the Commission has undertaken many steps to enhance police and sheriff's departments' abilities on the issue of officer performance.

March 22, 2007
Honorable Don Perata
Page three

Most notably, the Commission directed an 18-month study on the viability of administering a pre-employment personality assessment of peace officer applicants. The results of that study are on the agenda for assessment at the April meeting of the Commission. If accepted by the Commission, local law enforcement agencies may begin using a predictive five-trait assessment of peace officer recruits to test suitability for duty.

At the direction of the Commission, staff is also conducting validation studies on three perishable skill areas that we hope to implement as part of a new statewide standard.

6. *Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

The primary responsibility for handling parolees who return to their communities and live in re-entry facilities falls to parole agents. The Commission has, however, developed course curriculum entitled "Parolee Contacts" to teach officers the law as it relates to dealing with field encounters with parolees. The course also serves to educate officers about prison gang cultures, parolee psychology, interview techniques and the course of action to take when a parolee is suspected of violating the terms of parole.

7. *What progress have you made toward this [develop a distance-learning plan for Web-based training] goal?*

The Commission continues to be a leader in on-line instruction for law enforcement professionals. The current instructional portal hosts instructor and law enforcement resources, discussion groups and training courses.

According to Commission reports, the technology-based training has more than 9,000 registered users, nearly 8,000 course completions, and more than 8,000 reported downloads. The numbers reflect the outstanding work of Commission staff dedicated to the project.

On-line courses are available on a wide variety of law enforcement subjects, including Law Enforcement Response to Terrorism, First Aid and PowerPoint presentations used in several training courses for peace officers and dispatchers.

It is the hope of the Commission that our web-based training for the future will include on-line tools that help peace officers with job-specific activities, such as a search warrant writing tool that helps first-time investigators in their efforts.

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March 22, 2007
Honorable Don Perata
Page four

Thank you for reviewing my responses to your questions. Please contact me by phone at (213) 749-1020 if you have any questions regarding my responses.

Sincerely,



Floyd Hayhurst

HENRY T. PEREA
COUNCIL PRESIDENT

FRESNO CITY HALL
2600 FRESNO ST.
FRESNO, CA 93721
(559) 621-8000
FAX (559) 498-2541

MANCHESTER
SATELLITE OFFICE
(559) 225-7293
FAX (559) 225-7294

March 16, 2007

Nettie Sabelhaus
Rules Committee Appointments Director, Room 420
State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Per Chairman Don Perata's request of March 2, 2007, below are my responses to the following questions:

1. Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?

As you know, POST was created by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. My goal as a commissioner is to ensure that POST continues to be the nation's premier agency in establishing professional standards, quality training, and effective services to law enforcement agencies throughout the state. To meet this goal, I believe it is vital for POST to stay focused on implementing the strategic plan. However, I also recognize the needs of communities and law enforcement agencies change and I will be a strong advocate for ensuring POST's strategic plan reflects the needs of those we serve. This means utilizing up to date technology, keeping an open dialogue with clients we serve, and continuously evaluating our policies. I am proud to serve on POST because every day the commission works to increase the professionalism of California Law Enforcement so they can better serve their communities.

2. Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?

This question is very timely as we will be discussing recruitment issues at our next POST meeting in April. According to a February memo by POST staff, an internal survey was conducted to get an

Rules Committee

March 2, 2007

March 16, 2007

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To provide some background, POST has designed an 8-hour course that meets the requirements of Penal Code Section 13519.6. The certified presenters of the course are the Museum of Tolerance and Napa Valley College. In addition, a Telecourse was developed and distributed to the field in 2002. The course was updated, in 2006 to meet the requirements of SB 1234, in conjunction with subject matter experts and the Senate Office of Research. Other actions that have occurred include updating the Hate Crime curriculum to include the AG's opinion (No. 04-1104, 8/15/05), a guideline document is being updated and a model hate crime policy for law enforcement is being developed. The guideline document encourages each agency to develop its own hate crime policy and describes the components that should be included in any such policy. According to staff, this information will be discussed at our July meeting.

5. What steps have you taken to help departments weed out potentially sub par employees before they are hired? What sort of training is available on this topic?

POST has moved aggressively on this topic and is continuing to develop courses to address this issue. Here is a brief summary of those actions. First, in 2003, POST updated the Oral Interview Manual which is comprised of an interview question bank, evaluation criteria, and associated regulatory updates. This was done to standardize the oral interview process and provides six dimensions a background investigator must assess in a prospective candidate. These include life experience, problem solving ability, communication skills, interest/motivation, interpersonal skills and community involvement. Second, in 2006, the commission adopted a redesigned Background Investigator Manual and Personal History Statement. This was done to improve the accuracy, completeness, and consistency of background investigations throughout the state. Third, the commission directed staff to study the feasibility of establishing a statewide writing standard for exit from the basic academy. Fourth, this April, the commission will review the results of an 18-month study on the viability of administering a pre-employment personality assessment of peace officer applicants. Fifth, a validated pre-academy physical fitness test battery will be completed this summer. Sixth, Basic Academy training and assessment procedures have been developed to integrate leadership, ethics and community policing, and problem based learning into all aspects of the Basic Course Training and

initial assessment about recruitment issues that were faced by agencies in the past year. Respondents unanimously indicated that law enforcement executives have expressed recruitment as a universal problem for local law enforcement agencies. Responses also reflect frustration in recruiting qualified candidates. According to strategic plan objective C.6, POST staff is required to develop a comprehensive plan for POST's role in addressing recruitment issues. It is my understanding, at the upcoming commission meeting, that POST staff will recommend that a statewide survey be administered to local law enforcement to assess their perception of recruitment issues, POST's perceived role in this issues, and potential solutions. The results of this survey will help staff and the Commission better assess what POST needs to accomplish in assisting local law enforcement. In addition, staff will recommend that POST conduct a workshop specifically for law enforcement and human resource executives for small to medium sized cities. I fully support these recommendations and will be looking forward to more discussion at the next commission meeting.

3. The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of this proposal? If it is done, how would the change affect recruitment?

The POST strategic plan offers several on-going objectives related to this issue. These include raising the entry-level education requirement above high school or GED and the reading and writing requirement, requiring reading and writing testing for entry into the basic academy, expanding the cognitive testing for peace officers, and establishing basic academy report writing standards. By commission action, current status of raising entry-level education requirement and reading and writing standards, reading and writing testing for entry into the basic academy have both been deleted due to the perceived negative impact on recruitment. The other items are still under review by staff with the consideration of how each item will impact recruitment. While I believe it is of the utmost importance to provide quality recruits to local agencies, I am also very concerned with any potential recruitment barriers that could result from these policies.

4. Please describe the commission's progress toward meeting requirements of SB 1234 (Kuehl).

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Testing Specifications, including the associated student workbooks. Lastly, POST has developed and delivered a revised, competency based Scenario (job simulation performance measurement) testing program for the Basic Course.

6. Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?

POST has developed two programs to help local law enforcement handle this issue. First, in 1997, POST produced and distributed a two-hour telecourse entitled Parole and Local Law Enforcement. This course was designed to familiarize police officers of the size of the parolee population in their respective communities, the rights and responsibilities of parolees and potential hazards in contacting parolees who may be suspects in a crime. Second, in 1999, POST designed a course entitled "Parolee Contacts". This course is designed to teach officers the law as it relates to dealing with field encounters with parolees. It also educates officers about prison gang culture, parolee psychology, interview techniques and the course of action to take when one is suspected of violating the terms and conditions of parole.

7. What progress have you made towards this goal(web-based training)?

POST has been on the cutting edge of providing resources and training via the web. In 1991, ACR 58 established the POST Learning Technology Resource Center (LTRC), which spearheaded the creation of computer-based training programs, first on interactive videodisc and then on CD-ROM. Currently, LTRC is developing internet-based training programs and performance tools for California law enforcement accessed through the POST Learning Portal. The Portal hosts instructor and law enforcement resources, discussion groups, and training courses. A recent snapshot of the Portal's statistics shows tremendous support for web-based training; Registered Users 9,090, Course Completions 7, 835, and Resource Downloads 8,071. Since becoming a commissioner, I have been an enthusiastic supporter of web-based training because it gives access to training 24/7, consistent quality of training, the ability of rural agencies to easily access training, and the economies of scale. In addition,

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POST is developing several new web-based tools that I continue to support. These include performance support tools which brings training to the officer at the point of need and the establishment of an advisory council to assist staff for future online training. The next major step will be for the commission to ensure that an adequate funding source is secured to meet the demand by local law enforcement.

Thank you again for the opportunity to serve the Commission on Peace Officer Standards and Training.

Sincerely,

A handwritten signature in black ink, enclosed within an oval. The signature appears to be "HTP" with a stylized flourish at the end.

Henry T. Perea
Council President
City of Fresno

HTP/slv

CALIFORNIA LEGISLATURE

MEMBERS

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VICE-CHAIR

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GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

March 2, 2007

Hon. Laurie R. Smith
Santa Clara County Sheriff

Dear Sheriff Smith:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, March 28, 2007. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by March 22, 2007.

We would also like to receive an updated Form 700, Statement of Economic Interest, by March 22nd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?*

Background

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. It consists of 14 members appointed by the governor plus the attorney general. The POST organization, with more than 130 staff members, functions under the direction of an executive director appointed by the commission. POST coordinates a comprehensive training program, with more than 4,300 certified courses.

California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*
3. *The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

Legislation

SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law-enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.

4. *Please describe the commission's progress toward meeting these requirements.*

Employment

The commission's strategic goals state: "The costs associated with sub-par employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."

5. *What steps have you taken to help departments weed out potentially sub-par employees before they are hired? What sort of training is available on this topic?*

Parole Reentry

The California Department of Corrections has begun to place a renewed emphasis on transitioning parolees back to their home communities and helping them find employment and housing.

6. *Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

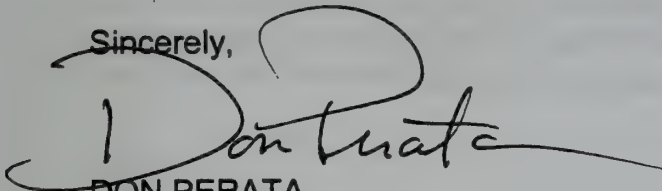
Web-based Training

One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

7. *What progress have you made toward this goal?*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,



DON PERATA

DP:MG

**SHERIFF LAURIE SMITH
SANTA CLARA COUNTY OFFICE OF THE SHERIFF
RESPONSES TO SENATE RULES COMMITTEE QUESTIONS**

Goals

As a member of the Commission on Peace Officer Standards and Training, my goal is to advance the objectives of the Peace Officer Standards and Training (POST) Strategic Plan. These objectives include updating and raising the bar on selection and training standards, providing the best training to California law enforcement, and continually enhancing POST's services by fostering and facilitating healthy and productive organizational environments in which law enforcement personnel work by providing leadership development and management counseling programs.

Background

Recruitment Issues

As evidenced in the Commission on Peace Officer Standards and Training Strategic Plan, Objective C.6, POST staff is required to develop a comprehensive plan for POST's role in addressing law enforcement recruitment issues. Work on this objective is in process. POST staff will provide a report describing the current status of the plan at the upcoming March 2007 Long Range Planning Committee (LRPC) meeting.

POST staff has recently completed an internal survey regarding the perception of the field related to recruitment. An analysis of the survey shows that local law enforcement is currently experiencing a statewide crisis in recruiting qualified candidates to fill critical vacancies within their agencies. In April, staff will recommend to the LRPC and Commission that a statewide survey be administered to local law enforcement to assess their perception of recruitment issues and/or difficulties, POST's perceived role in law enforcement recruitment issues, and potential solutions. A study will be performed on the results of this survey and the outcome will assist staff and the Commission to better assess what measures POST needs to take regarding recruitment.

Staff will further recommend that POST conduct a recruitment workshop specifically for law enforcement Human Resources executives as recommended in the November 2006 Law Enforcement Recruiter Workshop for small to medium-sized agencies.

Raising Entry Level Qualifications

Several of the POST Strategic Plan Objectives have addressed studying the feasibility of raising entry-level standards for peace officers, including: (A.6) raising the entry-level education requirement above high school or GED and the reading and writing requirement; (A.7 & A.8) requiring reading and writing testing for entry into the basic

academy; (A.14) expanding the cognitive testing for peace officers; and (A.15) establishing basic academy report writing standards.

By Commission action, several of these objectives (e.g. raising entry-level educational requirements and reading and writing standards, reading and writing testing for entry into the basic academy) have been deleted because they could potentially have a negative impact and/or cause an artificial barrier to recruitment. In reviewing the Strategic Plan, it should be noted that objectives A.6, A.7, and A.8 each included the caveat that staff was to study the *feasibility* of adding these requirements while "...taking into consideration law enforcement recruitment issues." When the Commission recently added objectives that address expanding cognitive testing and establishing basic academy report writing standards, the direction to staff was to again be conscious of the potential impact these standards may have on recruitment.

Legislation

Hate Crimes

In order to meet the requirements of Senate Bill 1234 (Kuehl), Chapter 700, Statutes of 2004, the Commission on Peace Officer Standards and Training designed an 8-hour course that meets the requirements of Penal Code Section 1359.6. Certified presenters of the course are the Simon Wiesenthal Center ("Tools for Tolerance") in Southern California and the Napa Valley College (Hate Crimes Education) in Northern California. Additionally, a telecourse developed and distributed to the field in 2002, was updated in 2006 to meet the requirements of Senate Bill 1234, in collaboration with subject matter experts and the Senate Office of Research.

In 2006, Hate Crime curriculum was updated to include the Attorney General's opinion (No.04-1104, 8/15/2005) which reads, "...the intentional selection of a victim with a protected characteristic is not sufficient to constitute a hate crime; a subjective attitude amounting to bias motivation is an essential element of the offense."

A guideline document is being updated and a model hate crime policy for law enforcement is being developed at this time and will be presented at the July Commission meeting. The guideline document encourages each agency to develop its own hate crime policy and describes the components that should be included in any such policy.

Employment

Sub-Par Employees - Santa Clara County Sheriff's Office

The Santa Clara County Sheriff's Office has two areas in our hiring process that assist in eliminating potentially sub-par employees before they are hired: (1) the profile of the model employee we are looking for and (2) the extensive screening process.

The Profile: In the initial phase, there is a focus on candidates who either possess some level of higher education or some type of military service, (entry level Deputy Sheriff currently requires at least 60 college semester units). Over the years, it has been determined that candidates with some level of either educational or military experience are more focused and have better developed value/ethical profiles. It has also been determined that it is irrelevant what the subject matter of the educational experience is, as long as the classes were taken and completed with some level of competency.

There is an attempt to identify applicants that have the ability to multi-task at some level. This experience is often difficult to pinpoint in the applicants' background. However, once identified, it can be assumed that the applicant will have a better chance with manipulative skill sets like calmly talking on the radio while driving a car at high speeds.

The Sheriff's Office seeks applicants that have demonstrated their ability to calmly handle major life issues. This would include events like marriage, divorce, relationships, finding a job, keeping jobs, etc. Although this is sometimes referred to as maturity, it is believed that it is more likely the ability to confront and handle one's personal problems effectively. It is unlikely that a Deputy Sheriff could competently handle another individual's issues while in the field if he/she has not yet demonstrated an inherent ability to handle his/her own personal obstacles.

The Process: The Santa Clara County Sheriff's Office selection process begins like most with an entry level written test and a physical agility. After passing these tests, applicants are screened for high-risk behavior through the use of a personal history questionnaire (PHQ). The PHQ is basically a written inquiry into several critical areas of the applicants' background. The answers are placed into a computer and screened for "areas of concern" relating to impulse behaviors, ethical behaviors, and anger management. If applicants score high in any one of these areas they are either eliminated or called in for a one-on-one interview with our staff.

Once the PHQ process has been completed, all applicants are interviewed/screened to ensure they meet the agency profile, or have the ability to meet the agency profile in the future. Those individuals determined to not possess the agency profile, or possess the potential to meet the agency profile, are eliminated from the selection process at this point.

Once this initial interview has been completed, a background investigator completes an extensive three-hour interview in an effort to discover any derogatory information that would keep the applicant from being employed by our agency. The results of this interview are documented and sent to our internal staff for review.

Sub-Par Employees – Commission on Peace Officer Standards and Training

In 2006, the Commission adopted a redesigned Background Investigator Manual and Personal History Statement. POST staff conducted thirteen (13) training sessions to familiarize background investigators with portions of the manual that had changed to accommodate changes in law (i.e., ADA, Fair Credit Reporting Act, etc.) and to improve the accuracy, completeness, and consistency of background investigations throughout the state.

In 2003, POST updated the oral interview process through publication of the Oral Interview Manual, the creation of an interview question bank, evaluation criteria, and associated regulatory updates. This was done to standardize the oral interview process and increase the content validity of the oral interview process. Through this is a guideline document (not mandatory for field use), the six dimensions a background investigator must assess in a prospective candidate are incorporated into Commission Regulation 1002. These traits are: life experience, problem solving ability, communication skills, interest/motivation, interpersonal skills and community involvement/awareness.

The Commission has directed staff to study the feasibility of establishing a statewide writing standard for exit from the Basic Course. Poor report quality is one of the primary contributors of sub-par peace officer performance.

In 2004, the Commission directed an 18-month study on the viability of administering a pre-employment personality assessment of peace officer applicants. This study will be viewed and assessed at the April 2007 Commission meeting. If accepted by the Commission, agencies may use the material to evaluate five (5) traits of entry level peace officers: Conscientiousness, Agreeableness, Emotional Stability, Extraversion, and Openness to Experience. As a result of this research, these specific personality attributes were found to be highly predictive of one's ability to function effectively in a law enforcement environment. If approved by the Commission at the April 2007 meeting, staff will commence work on a resource document for all law enforcement agencies.

A validated pre-academy physical fitness test battery will be completed in summer 2007. Heretofore, POST had not offered a pre-employment physical fitness assessment. Additionally, the POST Medical Screening Manual continues to be updated to keep up with both advances in the identification and treatment of medical conditions, as well as case law associated with employment of individuals with disabilities.

Basic Academy training and assessment procedures have been developed to integrate leadership, ethics and community policing, and problem-based learning into all aspects of the Basic Course Training and Testing Specifications, including the associated Student Workbooks. Moreover, POST staff develops and continuously updates 27 mandatory, must-pass Knowledge tests, including comprehensive mid-term and final examinations.

Staff recently developed and delivered a completely revised competency based Scenario (job simulation performance measurement) testing program for the Basic Course. Two training courses were developed and delivered to those individuals who evaluate student performance on these tests, and who manage the programs at the academy level. POST is recognized as the world-wide leader in this area.

POST staff is currently conducting validation studies on three (3) perishable skills area that will be implemented as statewide standards upon completion. These areas are Firearms, Defensive Tactics, and Vehicle Operations. Currently, standards in each of these areas are set locally. All three of these should be completed and in place by the end of 2007.

Parole Re-entry

Training Courses – Commission on Peace Officer Standards and Training

POST develops training courses based on demand from the field or when a specific training is mandated by the legislature. In 1997, in response to requests from Chiefs and Sheriffs, POST produced and distributed a two-hour telecourse entitled Parole and Local Law Enforcement. This course was designed to familiarize police officers of the size of the parolee population in the communities they patrol, the rights and responsibilities of parolees, and potential hazards in contacting parolees who may be suspects in a crime.

In 1999, a POST Master Instructor Development Program (MIDP) student designed a course entitled "Parolee Contacts". Initially, there was only one presenter of this course. However, the curriculum was so relevant to patrol officers that there are now nine (9) presenters of this course statewide. This course was designed to teach officers the law as it relates to dealing with field encounters with parolees. From a public safety standpoint, it also serves to educate officers about prison gang culture, parolee psychology, interview techniques and the course of action to take when one is suspected of violating the terms and conditions of parole.

While all local law enforcement agencies work in concert with State Parole, the primary role of handling parolees who return to their communities and live in reentry facilities falls to parole agents. Sheriff's and Probation Departments may administer a local parole function whereby inmates may be released early for time served in county jails. Many agencies use electronic surveillance to monitor the movements of parolees when going from home to work.

Web-Based Training

Progress

POST has long been a leader in the development of technology-based training for law enforcement. In 1991, ACR 58 established the POST Learning Technology Resource Center (LTRC), which spearheaded the development of computer-based training programs,

first on interactive videodisc and then on CD-ROM. LTRC is now developing Internet-based training programs and performance tools for California law enforcement accessed via the POST Learning Portal.

Despite limited staff (one engineer, two designers, and one supervisor) and no permanent funding, staff has managed to produce and support some successful training programs. Currently, the Portal hosts instructor and law enforcement resources, discussion groups, and training courses. Statistics point to the portal's success:

Registered Users	9,090
Course Completion (3 courses)	7,835
Resource Downloads	8,071

POST has set high standards for online training. This push for quality learning experiences for the student has paid off. Comments by users have been overwhelmingly positive about the courses and they would like to see more training available via the Learning Portal.

There are several training and related resources available on the Learning Portal. These include:

- Learners First: Facilitation Skills for Learner-Centered Instruction (CPT credit)
- Communication: Keeping Your Edge (CPT credit)
- Law Enforcement Response to Terrorism (CPT credit)
- First Aid/CPR (Being updated)
- Search Warrant Development Job Aid (Being developed)
- Audio broadcasts of presentations made during the 2006 Recruiters Workshop
- Various publications
- PowerPoint presentations used in several training courses for peace officers and dispatchers

Some of the benefits of online training include access to training 24/7, consistent quality of training, the ability of rural agencies to more easily access needed training, savings in travel/presentation costs, and economics of scale where the more training that takes place the less it costs per student.

A technology POST is currently exploring is the use of performance support tools. Performance support tools bring training to the officer at the point of need and helps an officer do a job better and faster. An example of such a tool includes a search warrant writing tool that helps first-time investigators develop search warrants.

Topic areas being explored by POST for possible training include classroom instructor development, report writing, and officer safety. Some of the technologies that merit further research include natural language interaction, serious game design, modeling and simulation in a 3-D environment, and collective intelligence and community building through mass multi-user environments.

Administrative plans include the establishment of an advisory council to help staff determine an overall plan for online training. Examples of items the council could address include the development of a process and methodology for identifying needed training, determining priorities for research, and the development of policies and guidelines for the use of various products created.

Other administrative issues include resources. It is becoming apparent that in order to meet the demand for more training and to keep the promise implied by the establishment of the Learning Portal, decisions will need to be made regarding a consistent funding source, as well as sufficient personnel and resources. For instance, it takes an almost full-time position just to handle customer support calls. There is currently no permanent funding for this position. Should the use of the Portal continue at its current rate, staffing levels will soon not be able to keep up with demand.

CALIFORNIA LEGISLATURE

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GREGORY SCHMIDT
SECRETARY OF THE SENATE

NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

March 2, 2007

Michael J. Sobek

Dear Mr. Sobek:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, March 28, 2007. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by March 22, 2007.

We would also like to receive an updated Form 700, Statement of Economic Interest, by March 22nd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission?*

Background

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. It consists of 14 members appointed by the governor plus the attorney general. The POST organization, with more than 130 staff members, functions under the direction of an executive director appointed by the commission. POST coordinates a comprehensive training program, with more than 4,300 certified courses.

POST is seeking to enhance its services. One goal of the commission is to develop a comprehensive plan to address recruitment issues. This comes as

California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*
3. *The commission's strategic plan says it is considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

Legislation

SB 1234 (Kuehl); Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law-enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.

4. *Please describe the commission's progress toward meeting these requirements.*

Employment

The commission's strategic goals state: "The costs associated with sub-par employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."

5. *What steps have you taken to help departments weed out potentially sub-par employees before they are hired? What sort of training is available on this topic?*

Parole Reentry

The California Department of Corrections has begun to place a renewed emphasis on transitioning parolees back to their home communities and helping them find employment and housing.

6. *Have you developed training courses either for managers or officers on how to handle parolees who return to their home communities and live in a reentry facility?*

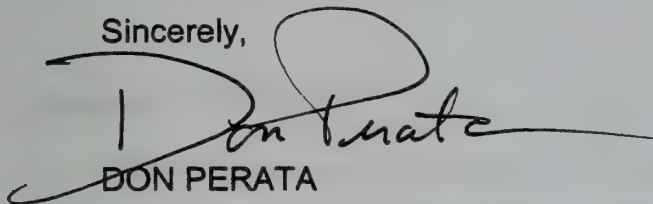
Web-based Training

One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

7. *What progress have you made toward this goal?*

Thank you for taking the time to answer these questions. Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end. Below the signature, the name "DON PERATA" is printed in a simple, sans-serif font.

DON PERATA

DP:MG

Memorandum

To: Nettie Sabelhaus, Rules Committee Appointments Director

From: Michael Sobek, POST Commissioner

Subject: Senate Rules Questionnaire

Senate Rules Committee

Date: March 18th, 2007

MAR 21 2007

Appointments

These following answers are in response to the questions you sent me on March 2nd, 2007.

1. Goals

Since becoming a Police Officer in 1984, I have seen a steady and positive rise in the level of quality and training coming out of POST. There are three major objectives in the POST Strategic Plan that has been updated every two years since 1997. One of those goals is to improve the quality and impact of training. My goal is to build on that and, as issues arise that require "out of the box" thinking, I hope to be a major factor in developing quality and meaningful training.

2. Background

Part of the Commissions responsibility is to direct POST staff to develop a comprehensive plan for POST's role in addressing law enforcement recruitment issues. We have done this in our Strategic Plan (objective c-6). Work on this very important issue is being done now. POST staff will provide a report to the

Long Range Planning Committee at the March LRPC meeting. Further, POST staff has recently completed an internal survey regarding the perception of the field related to recruitment. Based on this survey, POST personnel believe local law enforcement is currently experiencing a statewide crisis in recruiting qualified candidates to fill critical vacancies within their agencies. At the April Commission meeting, Staff will recommend to the Commission that a statewide survey be administered to local law enforcement to assess their perception of recruitment issues.

Q3.

We have to be careful in how we decide as a Commission what we want to do in raising, if at all, the qualifications for entry level peace officers. The cause and effect of this might point to issues we have in recruitment now. There are several objectives in the Strategic Plan that address this very issue. Those include raising the entry-level education requirement above a high school diploma or GED and the reading and writing requirement. Also, requiring reading and writing testing for entry into the basic academy and establishing basic academy report writing standards.

The Commission, in understanding the negative impact these standards would have on recruitment, POST staff was directed to delete the above objectives. We will continue to direct staff to study all alternatives and ideas in relation to raising the standards for all California Peace Officers.

Legislation

Q4.

SB 1234 (Kuehl) redefines the term "hate crime" and expands the material that the commission is required to include in its hate crime curriculum. The Commission's progress was to direct POST staff to design an 8 hour course that meets the Penal Code requirements stated in 13519.6 PC. This has been completed. Additionally, a Telecourse was developed and

distributed to the field in 2002. It was updated in 2006 to meet the requirements of SB 1234. A guideline document is being updated and a model hate crime policy for law enforcement is being developed at this time and will be presented at the July Commission meeting.

Employment

Q5.

In 2006, the Commission adopted a redesigned Background Investigator Manual and Personal History Statement. POST staff conducted 13 training sessions to familiarize background investigators with portions of the manual that had changed to accommodate changes in law (i.e., ADA, Fair Credit Reporting Act, etc.) and to improve the accuracy, completeness, and consistency of background investigations throughout the State.

Further, in 2003 POST updated the oral interview process through publication of the Oral Interview Manual, the creation of an interview question bank, evaluation criteria, and associated regulatory updates. The Commission has directed staff to study the feasibility of establishing a statewide writing standard for exist from the Basic Course. Poor report quality is one of the primary contributors of sub-par peace officer performances. POST staff is currently conducting validation studies on 3 perishable skill areas that will be implemented as statewide standards upon completion. These areas are Firearms, Defensive Tactics and Vehicle Operations. Currently, standards in each of these areas are set locally. All 3 of these should be completed and in place by years-end.

Parole Re-Entry

Q6.

Yes. POST develops training courses based on demand from the field or when specific training is mandated by the legislature. In 1997 POST, in response to requests from

Chiefs and Sheriffs, produced and distributed a two-hour telecourse entitled "Parole and Local Law Enforcement." This course was designed to familiarize police officers of the size of the parolee population in the communities they patrol, the rights and responsibilities of parolees and potential hazards in contracting parolees who may be suspects in a crime.

Further, in 1999 a POST Master Instructor Development Program (MIDP) student designed a course entitled, "Parolee Contacts". This curriculum has become so relevant to patrol officers that there are nine presenters of this course.

Web-based Training

Q7.

POST has long been a leader in the development of technology-based training for law enforcement. In 1991, ACR 58 established the POST Learning Technology Resource Center (LTRC), which spearheaded the development of computer-based training programs. LTRC is now developing Internet-based training programs and performance tools for California law enforcement accessed via the POST Learning Portal. Currently, the Portal hosts instructor and law enforcement resources, discussion groups and training courses.

Administrative plans include the establishment of an advisory council to help staff determine an overall plan for online training. Examples of items the council could address include the development of a process and methodology for identifying needed training, determining priorities for research, and the development of policies and guidelines for the use of the various products created.

I hope my answers satisfy the Senate Rules Committee and I hope I will be confirmed so I can continue in helping this Legislature and POST. Attached is a copy of California Form 700 which was completed and signed in June of 2006 and has not needed to be updated.

Respectfully completed,

Michael J. Sobek

Morgan, Lewis & Bockius LLP
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306
Tel: 650.843.4000
Fax: 650.843.4001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Carol R. Freeman
Partner
650.843.7520
cfreeman@morganlewis.com

February 21, 2007

VIA OVERNIGHT MAIL

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento CA 95814

Re: Response to Senate Rules Committee 2/2/07 Questions

Dear Ms. Sabelhaus:

Pursuant to Senator Don Perata's February 2, 2007, request, I am pleased to submit answers to his questions, on behalf of the Senate Rules Committee, regarding my appointment to the Fair Employment and Housing Commission.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the commission? What challenges do you anticipate in meeting these goals?*

My goals as a Commissioner are:

- Increase public awareness about the role of the Fair Employment and Housing Commission through public speaking, and increased Commission meetings throughout the state.
- Provide content on the Commission's website which gives employers, employees, tenants, housing providers and others information about the Fair Employment and Housing Act "FEHA".
- Work with other state agencies to provide a single California website link for employment information about employee rights and employer responsibilities. This would aid both employers to comply with the law and employees to know their rights.

Senate Rules Committee

FEB 21 2007

Appointments

For example, California employees are entitled to a variety of leaves and benefits for medical and family care leave covered by at least three different agencies' laws: Pregnancy Disability Leave and California Family Rights Act Leave (under the Fair Employment and Housing Act – Fair Employment and Housing Commission and Department of Fair Employment and Housing), Paid Family Leave (Employment Development Department), and "Kin Care" leave (Department of Industrial Relations).

- Use the opportunity of the 50th anniversary of the Fair Employment and Housing Act to educate the public about civil rights gains and challenges in California and to increase the Commission's visibility.
 - The principle problems that the Commission will face to increase its visibility and celebrate the 50th anniversary of the FEHA will be the fiscal limitations.
2. *How will your background help you to fulfill the commission's mission and responsibilities?*
- I am a partner with Morgan Lewis & Bockius, specializing in employment law. Morgan Lewis's employment department was the winner of *The American Lawyer's* 2006 Litigation Department of the Year - Labor and Employment Law. I advise employers on a daily basis on how to comply with the state's employment laws, including the Fair Employment and Housing Act. This professional background assists me in understanding concerns of employers and employees and also provides me with the expertise to evaluate Commission decisions, briefs, proposed legislation, and regulations. I think I have already provided valuable insight into the decisions and regulatory process since my appointment, pending Senate approval.
 - My father is a paraplegic and thus I have learned from intimate exposure the challenges of a disabled person being treated equitably and with respect. As such, I am acutely interested in the pursuit of equality and access both from a personal and professional perspective.
3. *How often does the commission use teleconferencing? Is this alternative forum encouraged? What is done to ensure that the public's opportunity to observe and comment on proceedings is not compromised?*
- Unfortunately, the Commission does not have easy access to teleconferencing equipment and thus has not generally conduct teleconference meetings. Instead, the Commission has conducted several teleconference Commission meetings in the last year to allow the Commission to take votes on specific issues in a timely fashion between its usual in-person meetings. For example, the Commission has held several

teleconference meetings to adopt new versions of its sexual harassment training regulations.

- These meetings have been problematic because persons are spread out at multiple locations and it is difficult to access when Commissioners or members of the public wish to speak. The Commission's strong preference has been to conduct the majority of its meetings in person to allow its Commissioners and the public to fully participate and interact with each other, although teleconferencing could cut the cost of travel expenses for Commissioners and staff.

4. *What resources are available to non-English speakers through your website or elsewhere regarding the activities of the Commission?*

- At the moment, unfortunately, there are no resources available to non-English speakers through the FEHC's website. This year, the Commission will convert its website to the new templates adopted by the state. These templates will make the FEHC website compliant with web accessibility guidelines for persons with visual and hearing disabilities. With increased funds, the Commission will translate the information on its website into other languages.

I would be happy to expand on any of the answers set forth above, or any additional questions posed.

I am pleased to have been appointed to the Fair Employment and Housing Commission by Governor Arnold Schwarzenegger, and would be honored to have the Senate confirm my appointment.

Sincerely,



Carol R. Freeman

Enclosure

FAIR EMPLOYMENT & HOUSING COMMISSION

455 GOLDEN GATE AVENUE, SUITE 10600
SAN FRANCISCO, CA 94102-3660
TEL: (415) 557-2325 FAX: (415) 557-0855
www.fehc.ca.gov



February 15, 2007

Senate Rules Committee

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento CA 95814

FEB 27 2007

Appointments

Re: Response to Senate Rules Committee 2/2/07 Questions

Dear Ms. Sabelhaus:

Pursuant to Senator Don Perata's February 2, 2007, request, I am pleased to submit answers to his questions, on behalf of the Senate Rules Committee, regarding my appointment to the Fair Employment and Housing Commission.

1. Please provide a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the commission? What challenges do you anticipate in meeting these goals?

- As a Commissioner, I am committed to increasing the visibility of the Fair Employment and Housing Commission. The public, including the legal community, is not familiar with the adjudicatory and regulatory role of the Commission and how it is distinct from the investigative/prosecutorial role of the Department of Fair Employment and Housing. I hope to work with other Commissioners and staff to increase Commission visibility with the following actions:
 - speak to the public and attorneys at trainings throughout the state;
 - insure that the Commission conduct its meetings throughout California and invite the public to attend;
 - provide information on the FEHC website about the Commission's adjudicatory role and the advantages of adjudicating discrimination complaints before the Commission rather than in court; and
 - explore changing the name of the Commission either to the "California Civil Rights Commission" or the "California Equal Rights Commission" to make its name and role distinct from the Department of Fair Employment and Housing.
- The year 2009 will be the 50th anniversary of the Fair Employment and Housing Act. I am committed to making this anniversary an opportunity to celebrate civil rights achievements in California and also increasing the Commission's visibility.

Nettie Sabelhaus/letter

Re: Response to Senate Rules Committee 2/2/07 Questions

February 15, 2007

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- I anticipate that the main problems in increasing the Commission's visibility and in celebrating the 50th anniversary of the FEHA will be the financial constraints of an ambitious agenda working with a very small agency, with limited resources and staff.

2. *How will your background help you to fulfill the commission's mission and responsibilities?*

- I am an attorney specializing in employment law. I've been practicing law since 1999 and my most recent position was with the San Francisco City Attorney's Office. In addition to practicing, I've taught the law at U.C. Hastings College of Law. This professional background gives me the expertise to evaluate Commission decisions, briefs, proposed legislation, and regulations.
- My membership and leadership in the Charles Houston Bar Association, an African American bar association, keeps me in touch with the civil rights concerns that affect the African American community as well as other Californians.

3. *How often does the commission use teleconferencing? Is this alternative forum encouraged? What is done to ensure that the public's opportunity to observe and comment on proceedings is not compromised?*

- The Commission does not have access to teleconferencing equipment and thus has not conducted teleconference meetings. Instead, the Commission has conducted several telephonic Commission meetings in the last year to allow the Commission to take votes on specific issues in a timely fashion between its usual in-person meetings. For example, the Commission has held several telephonic meetings to adopt new versions of its sexual harassment training regulations, although not at the initial meeting where the Commission took extensive public comments about its proposed regulations.
- These meetings have been problematic because persons are spread out at multiple locations and the Chairman cannot tell, easily, when other Commissioners or members of the public wish to speak. The Commission's strong preference is to conduct the majority of its meetings in person to allow its Commissioners and the public to fully participate and interact with each other.

4. *What resources are available to non-English speakers through your website or elsewhere regarding the activities of the Commission?*

- At the moment, unfortunately, there are no resources available to non-English speakers through the FEHC's website. The Commission established its website in 2005 with existing resources. The Commission has received no augmentation to its budget to include its

Nettie Sabelhaus/letter

Re: Response to Senate Rules Committee 2/2/07 Questions

February 15, 2007

Page 3

increased IT needs, which are handled by the Department of Technology Services. This year, the Commission will convert its website to meet the new templates adopted by the state. These templates will make the FEHC website compliant with web accessibility guidelines. With increased funds, the Commission will translate the information on its website into other languages.

I am pleased to have been appointed to the Fair Employment and Housing Commission by Governor Arnold Schwarzenegger, and would be honored to have the Senate confirm my appointment.

Sincerely,

A handwritten signature in cursive script, reading "Tamiza Hockenull".

Tamiza Hockenull
Commissioner



FAIR EMPLOYMENT & HOUSING COMMISSION

455 GOLDEN GATE AVENUE, SUITE 10600
SAN FRANCISCO, CA 94102-3660
TEL: (415) 557-2325 FAX: (415) 557-0855
www.fehc.ca.gov

February 15, 2007

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento CA 95814

Senate Rules Committee

Re: Response to Senate Rules Committee 2/2/07 Questions

FEB 21 2007

Dear Ms. Sabelhaus:

Appointments

Pursuant to Senator Don Perata's February 2, 2007, request, I am pleased to submit answers to his questions, on behalf of the Senate Rules Committee, regarding my appointment to the Fair Employment and Housing Commission.

1. Please provide a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the commission? What challenges do you anticipate in meeting these goals?

I have been a Commissioner since 1999 and since, 2000, Chairman of the Fair Employment and Housing Commission, appointed initially by then Governor Gray Davis and reappointed now by Governor Arnold Schwarzenegger.

My principle goal as a Commissioner and as Chairman throughout my tenure has not wavered, which is to ensure that the Fair Employment and Housing Act (FEHA) is evenly enforced by a neutral adjudicatory agency. The Commission aspires to the highest level of professional adjudication and has committed resources to train its administrative law judges on administrative adjudication, ethics, and case law; educate its Commissioners on the Fair Employment and Housing Act; and provide training wherever possible to the public through MCLE programs, trainings for human resource professionals and forums for the general public.

Further, I am committed to educating the public and principally the employer community about the benefits of adjudicating employment discrimination matters before the Fair Employment and Housing Commission rather than in court. Our ALJs knowledge of the FEHA is second to none and the administrative process is significantly faster and less expensive than court.

A further goal is to create a work plan for the Commission for the next several years, encompassing the 2009 fiftieth anniversary of the passage of the FEHA, which we hope will involve all three branches of government. We would like to involve the entire state in celebrating California's achievements in civil rights in this last half century and look forward to the challenges ahead.

Nettie Sabelhaus/letter

Re: Response to Senate Rules Committee 2/2/07 Questions

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The principle problem that the Commission will face to increase its visibility and celebrate the 50th anniversary of the FEHA will be the fiscal limitations of a budget with no money for 50th anniversary planning and limited money for Commissioner and Commission staff travel.

2. How will your background help you to fulfill the commission's mission and responsibilities?

I am a name partner with Stockwell, Harris, Widom and Woolverton specializing in workers' compensation law. Through my tenure on the Commission, I have also become an expert on the FEHA, especially with the overlap between workers' compensation and disability law under the FEHA. My professional background has been invaluable to understand the complex legal issues that arise in Commission decisions, briefs, proposed legislation, and regulations.

3. How often does the commission use teleconferencing? Is this alternative forum encouraged? What is done to ensure that the public's opportunity to observe and comment on proceedings is not compromised?

The Commission does not have access to teleconferencing equipment and thus has not conducted teleconference meetings. Further, only at the San Francisco location are there staff who would be trained to set up and run the teleconferencing equipment.

The Commission has conducted several telephonic Commission meetings in the last year to allow the Commission to take votes on specific issues in a timely fashion between its usual in-person meetings. For example, the Commission has held several telephonic meetings to adopt new versions of its sexual harassment training regulations, although not at the initial meeting where the Commission took extensive public comments about its proposed regulations.

These meetings have been difficult because Commissioners, staff and the public are spread out at multiple locations and I, as Chairman, cannot tell easily when other Commissioners or members of the public wish to speak or who is speaking. These meetings are also very difficult for the Commission's clerk to accurately take minutes.

The Commission's strong preference is to conduct the majority of its meetings in person to allow its Commissioners and the public to fully participate and interact with each other.

4. What resources are available to non-English speakers through your website or elsewhere regarding the activities of the Commission?

There are no resources currently available to non-English speakers through the FEHC's website. The Commission established its website in 2005 with existing resources. The Commission has

Nettie Sabelhaus/letter

Re: Response to Senate Rules Committee 2/2/07 Questions

February 15, 2007

Page 3

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I am pleased to have been appointed to the Fair Employment and Housing Commission by Governor Arnold Schwarzenegger, and would be honored to have the Senate confirm my appointment.

Sincerely,

George Woolverton
Chairman

561-R

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1:35 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 11, 2007

1:35 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

SUSIE SWATT, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

JOHN E. CHALKER, Member
California Transportation Commission

SENATOR DENISE DUCHENY

JAMES N. EARP, Member
California Transportation Commission

CARL T. GUARDINO, Member
California Transportation Commission

SENATOR ABEL MALDONADO

LARRY L. ZARIAN, Member
California Transportation Commission

SENATOR JACK SCOTT

RICHARD KATZ, Board Member
Metropolitan Transit Authority (MTA)
City of Los Angeles

PATRICK HENNING
California State Council of Laborers

DAVE ACKERMAN
Associated General Contractors

J. KEVIN PEDROTTI
Engineering and Utility Contractors Association

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--ooOoo--

CHAIRMAN PERATA: The Senate Rules Committee will convene.

We're now delighted to have four members to shoot at. We have taken all four members of the California Transportation Commission who are up for confirmation, we're taking them up today, even though two members were recently appointed, and Mr. Chalker is up for his second appointment, and Mr. Zarian is at the end of his year.

And the reason for doing that is that the passage of Prop. 1A and 1B have given a renewed sense of urgency to the work of this commission. And as Commissioner Tavalino said to me a long time ago, nothing would have served us better than having some money to spend. Well, now we do.

So, I wanted to, at least in my judgment, to give everyone who is eligible for confirmation, to do that now, to get that out of the way, to let you know what our expectations are. I know at least two of us have a lot of decided opinions about that.

But this is a little unusual, but I think the opportunities that we have been provided with the passage of these bonds is an extraordinary one, so I see you now as -- oh, that's not fair. Who hired the little girl.

[Laughter.]

CHAIRMAN PERATA: Absolutely shameless.

[Laughter.]

CHAIRMAN PERATA: I know, Carl. The rest of them

1 are too old.

2 So the four of you -- John Chalker, James Earp,
3 Carl Guardino, and Larry Zarian -- please come forward.

4 Oh, I'm sorry, Senator Maldonado.

5 SENATOR MALDONADO: I just wanted to make a brief
6 comment on one of the members, if I may.

7 CHAIRMAN PERATA: Certainly. Is it a state
8 highway or is it a bypass?

9 [Laughter.]

10 SENATOR MALDONADO: It's the Saratoga Highway,
11 Mr. Chairman.

12 Mr. Chairman and Members, it brings me great
13 pleasure to sit here today and to introduce Carl Guardino. I've
14 known Carl for quite some time, and he's been a great friend of
15 mine, a great friend of the Silicon Valley. And I think he's a
16 great addition to the California Transportation Commission.

17 Carl's a great man. He's a former legislative
18 staffer and a visionary for Silicon Valley. He's done a
19 fantastic job there. He's currently the Chief Executive of
20 Silicon Valley Group, Leadership Group, where he has been there
21 since 1997, Mr. Chair and Members, and Mr. Ashburn. He serves
22 on numerous local boards and community organizations. He's an
23 advocate for fixing California's transportation problems. He's
24 worked very, very hard in the northern part of my district,
25 which is the Silicon Valley, to make sure everything's put in
26 place, to bring more transportation to the area.

27 All I want to say to the Members and to you,
28 Mr. President, is that this man has a lot of distinctions, has a

1 lot of awards, too many to count. All I can say is that when I
2 look at somebody for an application process, whether it be my
3 office, or a department, or a state agency, I want somebody
4 that's going to work very, very hard. This man is a worker.
5 He's dedicated, and he'll bring a lot of expertise, a lot of
6 knowledge, a lot of dedication to the California Transportation
7 Commission.

8 So, it is without reservation, Mr. President and
9 Members of this body, that I recommend Carl to serve on the
10 California Transportation Commission. And he doesn't need to
11 bring Leslie and his daughter here to this Committee. He's
12 going to get this job on his merits and all that he's done.

13 So, thank you very much, Mr. President, and thank
14 you Members.

15 CHAIRMAN PERATA: Thank you, Senator.

16 Senator Ducheny.

17 SENATOR DUCHENY: Thank you very much,
18 Mr. Chairman and Members.

19 I just want to take a brief moment to introduce
20 also John Chalker, who has been now serving on the commission
21 for a couple of years, has some experience that I think will be
22 valuable as we move through this process.

23 You know, a lot of new Members just in the middle
24 of new bonds, I think, is something we need to think about, and
25 certainly having somebody who at least has been through a couple
26 of the first rounds I think is important. John has been there.

27 And frankly, it is a regional question. It isn't
28 a specific highway, but Mr. Chalker is the first San Diegan to

1 be on this committee in several years. And while we appreciated
2 being represented by Mr. Torres from Los Angeles on a regular
3 basis, it is nice to have somebody who really does live near the
4 border and is a former member of the World Trade Center in San
5 Diego, and other kinds of issues like that, is very aware of the
6 large trade issues, the particular complexities of border
7 traffic, and some of those, and able to bring that to the CTC in
8 their statewide deliberations. I think it is important that all
9 regions of the state be represented in that sense. It helps
10 bring balance to the whole commission and to their view of the
11 projects before them.

12 I think now is a critical time, particularly on
13 these trade corridor issues that we all -- that we have people
14 on the CTC who can look at that statewide trading perspective,
15 and international really because a lot of it is about our ports.
16 But it's the transportation that gets things to and from our
17 ports that makes us a positive economy in this global economic
18 market.

19 So, we appreciate your favorable consideration
20 and confirmation of the John Chalker.

21 Thank you.

22 CHAIRMAN PERATA: Thank you.

23 Senator Scott, I think, is on his way down, but
24 why don't the four members come up. He wanted to introduce
25 Larry.

26 What I'd like to do in the interim, the person I
27 was going to introduce, I was going to come down there and do
28 it, but just don't tell McClintock that I'm doing it from the

1 dais because it'll offend his sensibilities and decorum.

2 I wanted to just say to everyone that, had it not
3 been for Jim Earp, I don't think a lot of what we were talking
4 about today, and talked about all last year, would have been the
5 center of the discussion.

6 Jim has been working on transportation issues for
7 a long time. He represents a consortium of business and labor
8 groups in the Bay Area. I've worked with him on a number of
9 successful campaigns. But it was really his drive and energy
10 that brought into focus what we needed to do, and we needed to
11 do it in a big way.

12 And so, for the role that he's played in the
13 passage, the formation and the passage of the bonds, and the
14 energy that he's brought to this for so many years, it's
15 rightful and righteous that he should be now on the commission
16 that is going to implement the work that has been done by the
17 Legislature and by so many other people for the past number of
18 years. So, I am just delighted to have your leadership on the
19 commission, Jim.

20 And Jack Scott, we were going to allow you a few
21 words for Larry, if you'd like to come up. You're a little
22 late, but that's okay.

23 SENATOR SCOTT: I was told that it'd probably be
24 2:00 o'clock before he'd be up.

25 CHAIRMAN PERATA: Awake or sitting?

26 [Laughter.]

27 SENATOR SCOTT: Well, Larry's always awake.

28 Anyway, it is a privilege for me to recommend

1 most enthusiastically the appointment of Larry Zarian to the
2 California Transportation Commission.

3 I've known Larry quite a number of years. I'm
4 fortunate to have him as a constituent of mine. And I've even,
5 on occasions, been a guest on his talk show. He is a highly
6 respected person in Glendale. He was a member of the City
7 Council for many years.

8 He also, of course as you know, served on the
9 Metropolitan Transportation Authority. He knows transportation
10 extremely well. And his knowledge and experience in that area
11 will be, I think, very, very helpful.

12 I don't want to go on too long, because I imagine
13 most of you are sold on Larry, so I will simply say that I'm
14 here and very glad to endorse him because of his knowledge, his
15 experience, and he has a genial personality, which means that he
16 is able to get along, and will be able to get along with the
17 members of the commission.

18 CHAIRMAN PERATA: Say no with a smile.

19 Thank you, Jack.

20 CHAIRMAN PERATA: Welcome to all of you. As I
21 mentioned a moment ago, we have two brand-new, freshly minted
22 appointees, and one for reappointment, and one who has just
23 completed the first year.

24 And it is because of the extraordinary
25 circumstances that we're fortunate to be faced with in the
26 coming months and years, that it was my determination, and I
27 talked to the Governor about this, of bringing everybody forward
28 immediately so we can get on with business.

1 There are a series of questions that I'd like to
2 ask. If it's "ditto," that would be great, but if you have
3 something specific that you want to say, that would be okay,
4 too.

5 I am going to do the family thing first because
6 maybe your daughter has something better to do, Carl, that I'm
7 sure would be more fun. Would you like to introduce your
8 family?

9 MR. GUARDINO: Chairman Perata and Members,
10 you're very kind.

11 I'm honored today that my wife and daughter and
12 brother-in-law are here. If they wouldn't mind standing or
13 wiggling, whatever the case may be, but my wife, Leslie
14 Guardino, who is also on the Industrial Welfare Commission for
15 the State of California. Our daughter Jessica Guardino, who's
16 29 months old, and my brother-in-law Gregory.

17 CHAIRMAN PERATA: Thank you.

18 Welcome.

19 Anyone else have family here? Everybody else
20 knows better.

21 [Laughter.]

22 CHAIRMAN PERATA: With the passage of 1B, the
23 state's transportation sector will be the recipient of just a
24 little this side of \$20 billion.

25 I guess first off, from your various
26 perspectives, put that in context for us. You've all been
27 involved with this for a period of time in a variety of sectors.

28 Jim, why don't you start, as the newest of the

1 minted.

2 MR. EARP: Thank you, Mr. Chair.

3 You know, I played baseball in my younger days,
4 and as a pitcher I was used to batting ninth, so being lead-off
5 is a different experience.

6 CHAIRMAN PERATA: I batted ninth when I wasn't
7 pitching.

8 [Laughter.]

9 MR. EARP: As far as my particular perspective
10 goes, the importance of delivering on Proposition 1B funding is
11 absolutely paramount for not only the commission, but for the
12 Legislature.

13 You, Mr. Chair, it was interesting as I was
14 coming down here today, I was thinking about what all has
15 happened this last year. And if my memory serves me correctly,
16 it was the week after spring break last year that you picked up
17 the pieces of the bond package and started putting it all back
18 together, and over the course of the next four or five weeks,
19 breathed new life into it. There were a lot of nay sayers back
20 then who really doubted the ability of you or the Legislature to
21 put that together. But you got together with the other leaders
22 on both sides of the aisle and did just a tremendous job of
23 putting together what became a historic package.

24 I was here on the morning of May 8th. It was
25 about 3:00 o'clock, as I recall, in the morning when that final
26 vote was taken over on the Assembly side. And as I was going
27 home, I thought, you know, this is truly historic. We've never
28 seen anything like this in California.

1 Then, of course, it became the job of getting
2 those bonds passed, and that was quite a task.

3 I will have to say, I don't want you to think I'm
4 blowing smoke up the Chair --

5 CHAIRMAN PERATA: Do, please.

6 [Laughter.]

7 MR. EARP: -- because I'm not saying anything
8 today I haven't said before. There isn't a Legislator in the
9 state, and I've been around this for a long time, who worked
10 harder than Senator Perata did to raise the money, to help
11 get the campaign going, and to promote this historic bond
12 package. Frankly, if it weren't for him, we wouldn't be talking
13 about money today. We'd be talking about the lack of money.
14 And the California Transportation Commissioners would be looking
15 at reports that we've had the last couple of years, bemoaning
16 the fact that there's no money to get the real transportation
17 work done in the state.

18 So, my hat's off to you, Senator.

19 Having said that, I think our job now, as hard as
20 it was to pass 1B and all the other bonds, the work that went
21 into it, the real task now is to deliver. We have \$20 billion
22 worth of money for transportation, plus what Proposition 1A will
23 generate, about a billion-and-a-half a year. Like the Duracel
24 Battery, that one will just keep on ticking for years and years
25 down the road.

26 But as much as that is, as unprecedented as it
27 is, I think just the experience of watching what happened to try
28 to get that first four-and-a-half billion out the door showed

1 everyone that didn't know it already that our needs are huge,
2 and even \$20 billion isn't going to cover it.

3 So, where does that leave us? It leaves us with
4 the responsibility to deliver, make sure that this first 20
5 billion gets spent properly, in the way that the voters
6 intended. They took a real leap of faith, I think, to reach in
7 their pockets and say "Yes" on Prop. 1A and 1B.

8 You took a -- you, all of your necks are on the
9 line. Your credibility's on the line. My credibility's on the
10 line. The Commission's credibility is on the line to make sure
11 that we do the right thing with this money. Because if we think
12 that we can ever go back again for another bite of the apple,
13 we're dreaming if we don't do the right thing with this money
14 now.

15 So to me, project delivery is really paramount.

16 CHAIRMAN PERATA: John.

17 MR. CHALKER: Thank you, Senator.

18 In context, I think we all know 20 billion and
19 the estimated transportation project infrastructure backlog is
20 somewhere north of \$100 billion. It's really not important to
21 know what that exact amount is, because it's so much more than
22 what we have in terms of resources.

23 But it's not just a question of money, in my
24 mind. It's a question of time, or more importantly, the time
25 that's been lost when there wasn't sufficient funding, and the
26 time that's lost as we have to deal with the process to get a
27 lot of these projects constructed.

28 But most importantly, the time, as I view this

1 transportation bond, it's buying us four years of time to really
2 address how we're going to develop and have a secure funding
3 source in the future for transportation, given that there's a
4 changing environment out there brought about by the higher crude
5 oil, the higher gasoline, and the higher commodity prices that
6 we're going to see.

7 So, we have time here. And as Jim has said,
8 we've got a lot of credibility at stake to get projects done as
9 quickly as possible to impact the greatest number of people in
10 the strongest manner possible. But we still have to use this
11 time, I think, to work with the Legislature to try and develop
12 some secure funding source that will be sufficient for our
13 transportation projects in the future.

14 Thank you.

15 MR. GUARDINO: Mr. Chairman and Members, as we
16 look at the 19.9 billion, I think we put it into the perspective
17 of roughly 107 billion as we factor in Prop. 42, and the gas
18 tax, and federal funds, and other public and private partnership
19 funds that are available. And while that's a tremendous amount
20 of money for badly needed infrastructure, as Commissioner Vice
21 Chair Chalker just said, the overall state need in just about
22 the next ten years is upward of \$160 billion.

23 So, rule number one, we have to deliver what you,
24 your legislative colleagues, the Governor, and so many of us who
25 worked on the passage of Prop. 1A and Prop. 1B promised to the
26 voters. They deserve no less.

27 And second, we have to learn to leverage limited
28 state dollars as best we can to stretch that. My emphasis will

1 be on delivery and transparency, as well as making sure we
2 maintain well what we have, as well as continue to address the
3 traffic relief needs of a growing California.

4 MR. ZARIAN: Thank you very much, Mr. Chair and
5 Members of the Committee.

6 I am pleased. I'm very honored to be here.

7 Your question, Senator, is an excellent one, how
8 are we going to deliver the \$20 billion that the public has
9 entrusted us with.

10 I'm reminded of the letter that you wrote to the
11 Chair, Marian Bergeson, when you wrote a letter. If I may quote
12 you, Senator, you said.

13 "Voters across the state have
14 done their part by approving the
15 historic investment in the good
16 roads, schools, safe housing, and
17 flood protection we need to keep
18 California's economy sound. Now
19 it's up to us to deliver."

20 That's exactly my feeling.

21 Because my name starts with the letter "Z," I
22 always get to hear what everybody else says. But then I'm sure
23 I could say "Ditto," as you said. But if I were to say "Ditto,"
24 you'd say, "Who is this dummy that wants to be approved? He
25 needs to open his mouth and say something."

26 Therefore, it's my obligation to tell you that I
27 did my part as you did your part. And I'm extremely proud of
28 all of the elected officials. We went on television and radio,

1 and we promised our constituents that, "You vote for this, and
2 we are going to deliver."

3 It is an opportunity that we can't miss. If we
4 don't deliver, I can guarantee you the public isn't going to
5 want to listen to you or to us, to any one of us. But if we do
6 deliver, and we deliver the goods in a sound manner, in a timely
7 manner, and if we deliver what we have said we're going to do,
8 and it affects change in the State of California. The public
9 has to see a difference between now and the time we spend the
10 \$20 billion, that the dollars that were spent have made a change
11 not only in our roads, that we have made change in traffic and
12 all. If we cannot do that, we're not going to be able to go
13 back to them.

14 So therefore, I take my position very seriously.
15 I feel that if we don't do what we have promised, we're going to
16 have a tough time. So, I feel that it's an opportunity that's
17 long over due in the State of California. The public has said
18 "Yes" to us. We're going to have to come and prove to them that
19 what we asked them, we're going to do and deliver.

20 Thank you.

21 CHAIRMAN PERATA: Thank you.

22 One of the things I want to say just generally
23 what we tried to do when we negotiated for the bonds is that we
24 wanted it not to create a variety of new funding streams with
25 new bureaucracies to execute those. As much as possible, we
26 wanted to have the transportation money go through the CTC and
27 to, if necessary, expand the authority and powers of that
28 commission in order to meet that test.

1 One of the areas that you will be given
2 legislative direction by sometime this year will be in the new
3 area of greenhouse emissions and reduction, the
4 interrelationship between the money that we'll be spending on
5 transportation and its affect on greenhouse gas reduction. That
6 is the proper role of the Legislature.

7 As you know, this Governor has made his highest
8 priority that environmental priority, the emissions of
9 greenhouse gases, and the CO2 particulate matter specifically is
10 a major concern that many have with regard to construction
11 projects. And there are discussions going on right now about
12 what is the appropriate level of expectation that we should have
13 when you are preparing to review projects, and they are ready to
14 go out to bid, what the threshold discussion should be about
15 how contractors face that.

16 I'm not going to ask you for a point of view,
17 because hopefully we'll be giving you ours, and you won't have
18 one. That failing, you'll have to have one, but I'm quite
19 confident that we'll give you some direction. But I just want
20 to emphasize that that is something.

21 Having said that, and this is difficult, and
22 you've probably already experienced this, at least a couple of
23 you, with the CMIA distribution, but there are 37 people in this
24 building, out of 120, who were not part of the debate or the
25 vote on the bonds. So in that sense, they did not have any cash
26 on the table.

27 Yet all of us who are elected are elected to be
28 responsive to our own constituents and their needs. And so,

1 there will be some opportunity and some need to provide some
2 square corners to issues that people are going to say, "Well,
3 that's not what I had in mind."

4 I continuously refer people back to the intent
5 and the language of the bonds. That's the truest way to make
6 sure that we keep faith with people.

7 I do know that your job will become a little bit
8 more difficult just because of the fluidity of leadership in
9 this building.

10 A couple of you who did get to go through the
11 first phase of this with the CMIA, talk a little bit about your
12 experiences, John, how much fun that was.

13 MR. CHALKER: Well, I think the analogy I used,
14 Senator, was that I fully expected a food fight. It turned out
15 to be a little bit more like the Day-after-Thanksgiving-Sale at
16 Wal-Mart, when they open the doors and a few people got trampled
17 to death. It was a sloppy, messy process brought about, I
18 think, by several reasons.

19 The first is, it was a different approach to
20 funding. It wasn't the usual spreading peanut butter across the
21 table with a fair share program, so it was very new to everyone.

22 Second, it was under very tight time constraints.

23 Nonetheless, as I look back on it now, despite
24 the very rough bumps that we went through with it, I don't think
25 that the outcome would have been any meaningfully different in
26 terms of selecting projects than what we did.

27 From my personal view, my goals in making those
28 selections were to select projects that could impact the

1 greatest number of people, in the greatest manner, to reduce
2 traffic congestion in the shortest amount of time.

3 And then furthermore, to make sure that any
4 projects that were selected would be completely funded through
5 construction. There was no point in having a project that would
6 only be 80 or 90 percent constructed because that's still --
7 might as well be zero as far as the motorist was going for.

8 So, I think with those guidelines, we did an
9 adequate job, but there's no question I hope we see a smoother
10 process as we go forward, applying the other criteria to the
11 other programs.

12 CHAIRMAN PERATA: Thank you.

13 Larry.

14 MR. ZARIAN: Thank you.

15 Could we have done a better job? Yes. I wish we
16 had more time. I believe that we disappointed more people than
17 we made happy. There were a lot of projects, a lot of people
18 that wanted to have their input as to why they thought their
19 projects were worthy of funding.

20 Staff did an exceptional job in a short period of
21 time. We had a very short time to read everything.

22 And I don't know that -- I'm hoping that in the
23 future I won't be able to spend four-and-a half billion dollars
24 in this manner. I hope to have a little more time, or a lot
25 more time, to be able to question not only staff, and question
26 those, the applicants, also.

27 When I see the \$11-plus billion in requests, and
28 we see that there's only four-and-a-half billion dollars to

1 fund, there's something wrong with our inability to share with
2 the public.

3 Further, I think what we need to do as
4 commissioners, and it is our job, we need to educate the public
5 because a lot of those people that were denied went back to
6 their constituents and said, "We didn't get it." But they have
7 to have a reason why they didn't get that. We should have a
8 better opportunity to share our thoughts with them, to be able
9 to give them the tools to go back and disseminate that
10 information to their constituents, because if we are able to
11 give them more money in the next round -- I hated to see
12 disappointed people, and I think we could do a much better job.

13 Having said that, Senator and Members, under the
14 circumstances that we are, our hands were tied, and we had to
15 deliver. I think we did an exceptional job, and the credit, a
16 lot of the credit, has to go to our staff.

17 Thank you.

18 CHAIRMAN PERATA: I will say that I think the
19 reason that so much of this thing was choking was that when we
20 had originally been dealing with the bonds, we were expecting
21 the election to be in the primary. We did not adjust the
22 dates. Frankly, I never even thought about it until afterwards.

23 So, I thought the task that was given to you was,
24 you had to go vertical. I think you did a great job under the
25 circumstances. We didn't give I much time.

26 Last question I'm going to ask of all of you
27 would be, what are your expectations, or the realities -- I
28 guess since there's now money involved, it's probably all

1 perspective -- of working, and what do you expect of the
2 administration? What do you need from the administration, since
3 you are basically acting in an administrative capacity?

4 Why don't you start, Larry.

5 MR. ZARIAN: Thank you.

6 What we expect, at least I expect as a
7 commissioner, is a closer tie with the administration, at least
8 information from the administration. It is, what is it that the
9 administration wants. And have a better opportunity for
10 dialogue so we're not at crossroads. We don't deal as a
11 commission, we don't deal with the opposite of what the
12 administration wants.

13 I think my short answer to your question is, for
14 us to work very closely with the administration, have input, and
15 to be able to understand what is it that we want to do, and what
16 is it that the administration wants from us.

17 CHAIRMAN PERATA: You've been there for a year.
18 There's been some question as to whether or not the
19 administration has provided you with the data necessary.

20 Would you respond to that?

21 MR. ZARIAN: Probably not enough, not enough
22 information. I personally, as a commissioner, I take my job
23 seriously. I want to be able to disseminate all of the --

24 CHAIRMAN PERATA: You're in our hands now, so you
25 can be very straight forward. Probably in my judgment it means
26 you don't have enough.

27 MR. ZARIAN: Not enough. I was just trying to be
28 very political.

1 CHAIRMAN PERATA: You don't have to be.

2 MR. ZARIAN: Yes, thank you.

3 CHAIRMAN PERATA: The Governor has done his job.
4 Thank you.

5 Carl.

6 MR. GUARDINO: Senator, of course Commissioner
7 Earp and I were appointed on -- to take our seats on March 1.
8 What I would be looking for, then, from the administration with
9 a clean slate is very open communication, so that we can all
10 meet what is truly our united goal, which is to deliver as many
11 improvements that are cost effective, and help the most amount
12 of people as possible in the shortest amount of time. And to
13 therefore have the information we need to deliver.

14 And that means reaching out not only to the
15 administration in terms of direct staff within the building, but
16 also to Director Kempton and his team, and our independent
17 commission, John Varna and his team as well.

18 CHAIRMAN PERATA: John.

19 MR. CHALKER: Thank you, Senator.

20 I think Carl hit on a couple of things that I was
21 going to mention, and that's under the heading of resources to
22 deliver all of those projects in a timely manner.

23 I think he touched on two of those in terms of
24 sufficient resources at CTC staff, sufficient resources devoted
25 by Caltrans to get this, but also complete work from the
26 administration.

27 As an example of that, they recently gave us a
28 completed goods movement study with a list of project

1 recommendations. It's clear that that was a very incomplete
2 goods movement study on a statewide basis. It was a very heavy
3 focus on the ports alone, virtually no mention of airports,
4 which they said they had decided to defer.

5 And I think you need to be all-inclusive. If
6 they're going to do a study in any particular area, that they
7 give is a complete and comprehensive study.

8 MR. EARP: There are two things that come to mind
9 for me, in addition to what's already been said. One of them is
10 to -- in the idea of resources, I think one of the biggest
11 challenges to be able to deliver is not just the fact that we
12 get them out the door, that we get it done in a timely manner,
13 but we need to be cost effective with this.

14 Frankly, there are a lot of elements that can
15 load up the price of getting a construction job done. First and
16 foremost, if you look at the cost of construction materials in
17 the last three or four years, it's gone up in some cases some of
18 these things have more than doubled: concrete, steel,
19 aggregate. Aggregate's a particular problem.

20 I think that it would be helpful in the area of
21 resources for the administration to take the lead and to reach
22 out to the industry. Some of this is already happening, and I
23 think it's happening on the legislative side as well.

24 We need to figure out how we're going to produce
25 some of these materials more cost effectively and not bring in
26 gravel from Mexico. It doesn't make sense. You can't build
27 effectively and cost effectively that way.

28 The second thing I think is important is, the

1 real hallmark to me of the whole bond package was that it was
2 the result of the Governor and the Legislature finally coming
3 together, that there was a meeting of the minds. It wasn't
4 perfect. You didn't have total agreement on everything.

5 But in terms of how we need to move forward with
6 the transportation funding, I think we need clarity. There's
7 other pieces of the bond money in the pipeline that requires
8 some legislation. You're going to be involved in that. That
9 has to get through the Legislature, and it has to be signed by
10 the Governor. And if we can get that to happen so that there's
11 some clarity and some direction, particularly on the goods
12 movement side and a few things, I think that's going to be
13 helpful for the commission to be able to dispense its duties.

14 CHAIRMAN PERATA: One thing I would ask all of
15 you, you'll be summoned or invited, depending, to periodic
16 oversight hearings conducted by either Senate Trans or the
17 appropriate Budget subcommittee. We'll want to be able to
18 review with you where projects are.

19 The key thing is, we're going to allocate through
20 the budget, so you'll be on a budget year cycle. We want to
21 make sure that projects are ready to go during the budget year
22 when the money's allocated, because the fastest way that we can
23 show to the public what we've done is what we're doing.

24 And secondarily, and probably of equal importance
25 right now, as we have seen the slump in our economy based upon
26 the recession in the housing industry, it's always been
27 construction that's pulled us through that. And so, as I've
28 become probably fond of saying to a fault, people can walk off

1 the job site at a housing development and onto a site to build
2 something in the transportation field.

3 You've be appointed by the Governor. You're
4 going to be confirmed by the Legislature. In that sense you're
5 free agents, and your responsibility is really to the mission.

6 And the mission would say that if you're not
7 getting from anybody what you need, either legislative authority
8 or direction, or the data necessary from the administration, I
9 urge you -- and none of you are shy -- to say so. If it's not
10 happening, let us know. We're all in this together, and there's
11 no sense in standing on ceremony at all.

12 Now I'll let someone else have at it.

13 SENATOR ASHBURN: Thank you, Mr. President.

14 Let me ask a question of all of you related to
15 what Senator Perata's been talking about, and you've all alluded
16 to: Getting the job done; keeping faith with the voters, the
17 taxpayers, that they voted for these bonds; we're actually going
18 to build something to address a long neglected transportation
19 deficiency in our state.

20 It takes a long time, and the process seems to be
21 extraordinarily convoluted to get anything done when it's a
22 public works project.

23 So, I would like to know from each of you, from
24 your perspective, what is that causes California to have an
25 inability to get the job done, to get these projects built?

26 I know of some things that come to mind obviously
27 in terms of the length of time is that it takes to get studies
28 done. It seems that we study these things for extraordinary

1 lengths of time.

2 And then we have laws in place that require that
3 we study the impacts of the various projects that are out there.
4 Those sometimes involve, and open the door of Pandora's Box to
5 litigation that delays the projects.

6 Then we have the design aspect. We have a tug of
7 war going on between in-house design and the ability to contract
8 for work. And yet, the people of California voted
9 overwhelmingly for Proposition 35 that said we should contract
10 most of this work out when appropriate, and yet that doesn't
11 seem to be happening.

12 In the bid process, there's bonding requirements,
13 insurance requirements that drive up the cost. You mentioned
14 the cost of aggregate, the materials.

15 How can we decry the cost of materials when we're
16 shutting down plants, gravel plants in California because of
17 environmental regulations, forcing us to buy our materials from
18 someplace else, and then decrying the fact that it costs more to
19 do it in California?

20 The agreements that are in place, or that will be
21 in place as part of the contracts for the construction of these
22 projects, the type of labor that's used, whether that's the best
23 labor, the most appropriate labor.

24 There are many impediments and issues here that
25 will cause our projects to either be delayed, and that means
26 they're more costly, or they're going to be more costly because
27 we're doing it in a fashion that is not the most efficient. It
28 betrays our commitment that we were going to build these things,

1 but we can't build these things for all these reasons that I've
2 cited, and I'm sure many more.

3 I'd be interested in your perspective on that.

4 MR. ZARIAN: Thank you, Senator.

5 Many of the comments that you made I happen to
6 agree with. There are major delays, and the delays are
7 tremendous and very frustrating to those of us that are on the
8 commission, at least for me.

9 Recognizing that a lot of the delays, a lot of
10 the programing and everything that we're looking for is not
11 caused by the CTC. There are -- there are federal constraints.
12 There are state constraints also. There are state delays.
13 There are state regulations, state rules.

14 Each contractor is asked to deliver subject to
15 those rules. And if we are to do it, if Caltrans had to do it,
16 Caltrans would just as soon go as quickly as they could to
17 deliver the goods and deliver the projects.

18 But sometimes when laws are passed, and you have
19 to obey the law, you have to do the permitting, all of the
20 things that happen, I come from local government, and I know
21 what it takes. Sometimes you want to start a project. It takes
22 you nine months to year to do that. It's frustrating for those
23 of us that are elected, and yet it is -- it is the regulations
24 that stop us. It is the regulations that cause the delays. It
25 is the regulations that cause the delays, that cause the
26 extensive amount of dollars that costs more every time -- every
27 year.

28 If things were right, every year the costs go up

1 by ten percent, at least by ten percent. Lately they've been
2 going up by much more.

3 To answer your question once again, it is not
4 caused by CTC. It is caused by the regulations that are imposed
5 on the contractors and everyone that's involved in order to be
6 able to follow through and get through the contracts.

7 MR. GUARDINO: While I'm tempted to use "Ditto,"
8 to for the same reasons that Mr. Zarian said, let me speak to it
9 as well, Senator Ashburn.

10 From that local perspective, as someone who has
11 actually run initiatives to fund transportation improvements,
12 approved by the voters, the ability to deliver is key if we're
13 going to, one, keep faith and to ever have the ability to go
14 back and do more good work. And that's why your question, I
15 think, is so important.

16 The work of the commission, I believe, is to prod
17 and poke put sunshine when things are delayed.

18 One of the positive steps I think this commission
19 has made that can impact your point is a project delivery
20 council on the CMIA money, so that we can very clearly make it
21 clear which of those projects promised are on time, which ones
22 are falling off time or going over budget, so that we can hold
23 up best practices of what is being done well, and shine the
24 light on those that are falling behind and demand
25 accountability.

26 In terms of aggregate, I think your point was
27 excellent, as was Commissioner Earp's. It's not only that we
28 are losing -- losing those facilities now. We can't get new

1 ones sited in California. And that is while some would say a
2 local issue, it's one that we need a bully pulpit at all levels
3 of government, the very real human cost that not having enough
4 aggregate has on perhaps some of the same families who are
5 standing at hearings saying, "We don't want that facility." So,
6 we have to make that clear as well.

7 In terms of environmental regulations, we all
8 love California's wonderful environment of course. How do we
9 make sure that we balance our love for the environment with our
10 -- with our eagerness to keep our economy moving forward and get
11 these improvements for our commuters and families and industry
12 built in a timely fashion. We need to do that as well. And
13 there is a balance that we can and need to strike.

14 MR. CHALKER: Senator Ashburn, my approach to
15 this is somewhat pragmatic. And that is to say that there are
16 in certain areas battles that you have to choose whether to pick
17 a fight with them or not. To do so may delay getting your
18 project started, during which time the cost increases.

19 If it's one thing I have learned in the last two
20 years, as I have seen projects go either over budget or need to
21 be sent back and rebid, is that time does cost money on
22 transportation projects. Even if you reduce the scope of a
23 project, it ends up probably costing just as much as what the
24 original bid was, and you don't have any gain and financial
25 savings, and you've delayed the project for an extended period
26 of time.

27 So, I'm willing to be pragmatic and accept
28 certain items if, in the interest of project delivery, that

1 speeds them up.

2 But there are other items, as certainly Larry and
3 Carl have put forth to you, that are outside of our control but
4 need to be addressed in the longer term with a number of these
5 process issues, in terms of environmental processes and reviews,
6 et cetera.

7 We've certainly seen the ability of what we can
8 do at the state level in building transportation infrastructure
9 if we need to do it in a hurry as a result of what happened
10 after the Northridge Earthquake in Los Angeles. The question is
11 whether the Legislature and the administration want to assign
12 that kind of priority to either all or some specific projects to
13 get them done.

14 If you choose to do that, we can certainly crank
15 the wheels of money a lot faster and make things happen.

16 But again, that's a question that's beyond our
17 realm. It's a higher pay grade than we have.

18 MR. EARP: At our last meeting, Commissioner
19 Chalker was decrying the cost per square foot of building rest
20 stops on the highways. And I commented that having had the
21 opportunity to use those in a lonely stretch of road when there
22 was nothing else available, the cost per square foot was the
23 last thing on my mind at the time.

24 [Laughter.]

25 MR. EARP: The problems that you have laid out,
26 Senator Ashburn, are like an elephant. Somebody just handed me
27 an elephant to eat.

28 We have to do this a bite at a time and figure

1 out what things we work on first. We can't solve all of those
2 problems, and certainly the CTC has a certain ability to do
3 certain things.

4 But if you're asking for my opinion, one thing
5 that I think needs to really happen is that we need to -- we
6 need to get more private money into the system. I feel that the
7 public-private partnership -- you know, California is not doing
8 it really. There's a few isolated projects in the state where
9 it has made sense and has happened, but it's happening a lot
10 more effectively in other states and in other countries.

11 Design, build. We're not really doing that
12 either. Those are tools. They don't always necessarily just by
13 definition save money, but they can provide more competition in
14 the process. And when you have more competition, you have more
15 cost effectiveness.

16 In terms of Proposition 35, and contracting out
17 the design, coincidentally tomorrow the Supreme Court, I
18 believe, is going to make a final ruling on that lawsuit.

19 That proposition was passed a number of years
20 ago. The intent of it was to allow Caltrans to contract out
21 more of the design. It was not ever intended, from my
22 standpoint, to displace engineers that are employed by Caltrans.

23 What it was meant to do was to level out, to
24 smooth out the cycles of construction, so that when you have a
25 spike in the construction industry, and suddenly you've got a
26 lot more work coming in, which could be the case now with some
27 of this bond money, that you could ramp up through the private
28 sector and get some of that work done. And then, when it goes

1 back down, you don't have an additional employee on the payroll,
2 an additional pension to take care of down the road, and health
3 care costs, and so forth. That is over with.

4 And that's really the whole point of what
5 Proposition 35 was meant to do. It was meant to give Caltrans
6 flexibility, not to displace anyone.

7 So, these are just a few things that can be
8 done. There's so much more, and you've laid it out. We can't
9 answer them all today.

10 But we certainly have, I think -- in this group
11 there's an understanding that we want to work together to try to
12 get further along the road.

13 SENATOR ASHBURN: I've got to tell you, I'm
14 incredibly frustrated. I think the public is. I think that's
15 part of the reason why people voted "yes" for the bond. Sort of
16 like a last gasp, "We'll give you an opportunity to actually do
17 something about these roads, and this congestion, and this
18 incredible inconvenience, and to reduce emissions from idling
19 vehicles on the freeways."

20 You've all said the nice things. The question
21 is, are you going to do something about it? As commissioners,
22 are you actually going to?

23 One of you pointed out, and I think, Larry, you
24 did, the public information. The public is not aware that
25 aggregate plants can't be sited in California, and that we're
26 bringing in aggregate material from other countries in order to
27 meet our construction needs.

28 The public isn't aware that there are sweetheart

1 labor agreements that have been put in place that cause the
2 projects to be so much more expensive.

3 The public isn't aware that Caltrans is
4 circumventing the will of the voters by not contracting out.

5 And I agree with your point. It was not to
6 displace state workers, but it was to supplement.

7 My gosh, \$20 billion of funds that the public
8 expects to be spent on an emergency basis is certainly
9 supplement, and we ought to be designing those projects.

10 So the question is, are you going to do
11 something, or are you just going to talk?

12 And I don't really expect a response to that,
13 except to challenge you that I think we have a lot of
14 credibility on the line. I take this very personally that I
15 told the voters to vote for this thing, because I thought it
16 would make a difference.

17 I have a couple of questions for individual
18 members. First I want to talk with you, Mr. Earp, about your
19 employment and the relationship between organized labor and the
20 contractors.

21 It seems to me that that's one of the major
22 issues that's involved here. You told me that 25 percent of the
23 cost of a construction project is your labor cost. That's
24 significant.

25 So, part of the reason that projects cost so much
26 is that there are labor agreements in place that cause the
27 project to be more expensive, more expensive labor.

28 As I understand it, your employment is based on

1 those labor agreements?

2 MR. EARP: That's right.

3 SENATOR ASHBURN: And I want to know how you're
4 going to be able to separate your personal self interest from
5 the best interests of the people of California, if you derive
6 your income from agreements that have been made between the
7 laborers that are going to be doing the work, and the
8 contractors that are going to be hired to do the work?

9 MR. EARP: Well, I feel that if I had ever felt
10 over my 30-year career that my affiliation with labor was
11 counterproductive to society, I would have gone and done
12 something else for a living.

13 Frankly, the prevailing wage regulations that are
14 in place for construction have been of benefit to the industry.
15 I would have to just respectfully disagree with you in terms of
16 whether those are, you know, a key factor in driving up costs
17 for construction.

18 If you look at the statistics of this last few
19 years, the average increase in labor rates has been between
20 three and four percent. Those are -- and if you will look at
21 public construction work in California, most of it is done by
22 contractors who employ unionized construction labor; not all of
23 it, but most of it.

24 Every contractor has the opportunity to bid on
25 those projects, including nonunion contractors. So, those who
26 are most competitive, and have the best workers can do it more
27 cost effectively.

28 In terms of what are the real costs, if you were

1 to remove the labor cost -- the prevailing wage element from the
2 contracting process, what you would be doing basically is
3 saying, okay, all the contractors basically buy their materials
4 -- they're all paying about the same amount of money for
5 materials. They're all paying -- they're all dealt the same
6 designs, and so there are a lot of fixed costs that really
7 aren't that variable.

8 So, what do you really have to become competitive
9 on a contract? What you have is the productivity of your
10 workers.

11 And the only other way that you could become more
12 competitive, quote-unquote, would be to have -- would be to just
13 say, okay, I can pay my workers less money. Well, you could do
14 that, but are you really saving money? What happens if you were
15 to have a scenario where the workers were being paid half of
16 what they are now?

17 Now they don't have -- that half that they're
18 making, it probably means that they're not getting public -- or
19 that they're not getting health and welfare coverage. They
20 probably don't have a pension. They don't have any of the
21 benefits that a lot of the union workers have.

22 Well, in the construction industry, if a
23 unionized worker, if health care costs go up, and they have gone
24 up. They've gone up a lot more than three or four percent that
25 wages have gone up, where do they -- how do they deal with it?
26 They have to deal with it within their own wage package.

27 So, those that belong to the Operating Engineers,
28 the carpenters and the laborers, when they have had to deal with

1 rising health care costs, it came out of their wage package.
2 They took it right out of their -- their -- the wages they were
3 earning on the job. Some of them basically went to work, after
4 they'd been approached by the leadership, they've gone to work
5 with less -- for less money the next day. They've had to vote
6 for either a cut in their health care coverage or a cut in their
7 wages.

8 It did not come off -- you know, they didn't go
9 back to the awarding agency and say, "Look, we need more money
10 because health care costs have gone up." They took care of it
11 themselves.

12 So, I don't think that labor costs really, I
13 mean, when you look at all the elements that go in there, labor
14 costs are really not the culprit in this.

15 Do I have any conflict in terms of the fact that
16 I worked for the construction industry?

17 The only conflict I have is that I've probably
18 been out there probably more than just about anybody else in the
19 state in the last eight years to try to get funding for
20 transportation, both on a local level and on the state level.

21 I don't -- I don't have any -- you know, it was
22 the construction industry that helped to pay for a lot of those
23 campaign efforts that got these things out. If that's a
24 conflict, I'm conflicted. But I'm proud of it, because I think
25 we've helped to bring a solution to the voters.

26 In terms of whether or not there's any conflict
27 between -- I mean, CTC, when we award the money to an agency, we
28 don't award it to a contractor. We award it to a regional

1 transportation agency or a county agency. It may be two or
2 three years before that money actually finds its way out onto a
3 construction project. We have absolutely no idea what
4 contractor's going to get that award. That's way down the line.
5 We're done with it. We're moving forward.

6 So, there's no connection, really, in that
7 aspect. So, I don't really believe that I have any kind of
8 conflict there.

9 SENATOR ASHBURN: It's fascinating to me that you
10 so articulately minimize the cost of labor as part of the
11 projects, and whether special arrangements that exist between
12 certain workers and the contractor that employs them would
13 contribute to the cost of projects. I mean, how you can dismiss
14 that so easily is fascinating to me.

15 MR. EARP: Well, can I respond just briefly?
16 That was kind of a long answer that I just gave you.

17 But one of the things that I think is important
18 for people to understand is that labor is not just one big
19 amorphous body. There's a lot of different tactics, a lot of
20 different unions out there who do different things.

21 And the particular unions that sign my paycheck,
22 or are a part of signing my paycheck -- actually my organization
23 is half employer and half union, so it's fun to have board
24 meetings, actually -- but that basically is -- well, I lost my
25 train of thought. What as the question?

26 CHAIRMAN PERATA: Operating engineers, laborers.

27 MR. EARP: That's right, those two crafts were --
28 they've actually left building trades councils, and so forth,

1 over disagreements because of tactics.

2 We don't believe in holding up projects because
3 of using the CEQA process, or environmental regulations to hold
4 a project hostage. We just don't do that.

5 And so, you need to really take a look at how
6 different organizations treat themselves. I am very proud of my
7 industry and the crafts that are part of this organization that
8 created the California Alliance for Jobs, because they basically
9 put their jobs on the line by being the most competitive and
10 most productive. They don't have a lot of these -- of these
11 special agreements in order to exist.

12 CHAIRMAN PERATA: Let me just weigh in here
13 briefly.

14 Having done a lot of work with your association
15 for a long period of time, a couple things that I've learned is
16 that if you want to have job done correctly, particularly if
17 you're driving over it everyday, it's nice to have some of the
18 people who are doing the work know what they're doing.

19 I'll tell you, I couldn't, don't have the talent
20 to do, but I could not do the jobs that most of the union
21 workers on construction transportation jobs do.

22 You can get it cheaper if you go down in certain
23 areas of my district and hire people who have come to this
24 country seeking a better life, but you won't find anybody who
25 can bond them to certify their work.

26 So to me, this never has broken down along
27 business and labor. Most of the big contractors in this state
28 are signatory to union contracts, and it's because you can get

1 the work done as best as possible paying people a decent wage to
2 do it. I think it's a model.

3 If Jim had to sign checks on certain projects to
4 certain corporations, I think he would have a conflict. But
5 when he gives it to MTC or MTA, who in the hell knows what
6 happens to it after that, particularly the MTA.

7 [Laughter.]

8 SENATOR ASHBURN: And I just want to make it very
9 clear that my concerns are not with the individual workers, the
10 laborers that perform the work. Not in any way, manner, shape,
11 or form. I have great respect for the working men and women.

12 I do have problems, though, with arrangements
13 that have been negotiated or brought about through the
14 leadership of these organizations that cause projects to be
15 unnecessarily expensive. That is a reality.

16 And I am concerned about your conflict. I do
17 think you have one. You can't be employed by an entity through
18 which special arrangements have been made with the employer and
19 the employee, and then sit in judgment of the funds. I don't
20 think you can reconcile those two.

21 If I could move to Mr. Guardino for a minute, I
22 mean, especially the inconsistency in your answer to my question
23 about the delivery of projects, and the impediments that are in
24 place, and then the positions that you and your organization
25 have taken that have created this nightmare of regulation and
26 law that are shutting down our gravel plants, that are making
27 our projects more expensive.

28 How in the world can you reconcile yourself to

1 say that we ought to speed delivery and keep faith with the
2 public when you have taken the positions you've taken?

3 MR. GUARDINO: Senator Ashburn, thank you for
4 your comments. It leaves me somewhat puzzled.

5 Perhaps you can be more specific of any
6 position --

7 SENATOR ASHBURN: Maybe you could be more
8 specific in providing me the information that I asked for a
9 couple weeks ago.

10 MR. GUARDINO: Thank you, and so that the rest of
11 the Committee knows what you're referring to, two weeks ago the
12 Senator was kind to meet with me by phone.

13 SENATOR ASHBURN: Not my choice, by the way. You
14 chose to do the phone conference. I was more than happy to meet
15 you face-to-face.

16 MR. GUARDINO: There was no implication there.

17 SENATOR ASHBURN: Well, I took it that way.

18 MR. GUARDINO: Well, I'm sorry to hear that.

19 When we spoke by phone two weeks ago, you had
20 asked actually for information not about my transportation
21 background, but about information of the organization I am proud
22 to serve relative to our legislative record.

23 I think we're all familiar with what legislative
24 records are. And my organization did a legislative record from
25 year 2002 through 2005.

26 For reasons driven home by a good friend, Jim
27 Brulte, we discontinued that record because it was perceived
28 differently than what we had intended.

1 Your very capable chief of staff, Bill Bailey --
2 I believe you're the chief of staff -- or staff person Bill
3 Bailey, you and I had a phone conversation in which you
4 requested information about the bills in that legislative
5 record, and how different Legislators fared on that record
6 relative to our 210 member companies, bills each year as their
7 highest priorities.

8 I sent everything that you had requested. I
9 actually have it all with me today, if anyone is interested, the
10 bills each year as well as the breakdown for the four years of
11 that cycle.

12 Late yesterday, Mr. Bailey contacted me again. I
13 was out at the time. I called him as soon as I got back late in
14 the day, actually early evening in our last e-mail, in which he
15 had indicated that you wanted information on every Legislator
16 for every vote during those four years. As I've told Mr. Bailey
17 in writing as well as by voice, we're happy to provide that.
18 The gentleman on my team who did that work for those four years
19 is in Canada today on vacation with his wife and daughters. And
20 as soon as he gets back, we're happy to provide that
21 information.

22 So my question to you, sir, and very respectfully
23 is, what of those bills slows down aggregate contracts, as you
24 just mentioned, in any of the bills that we have taken positions
25 on?

26 SENATOR ASHBURN: Well, the point is that for
27 many years and under your leadership, there have been certain
28 measures, certain bills, that you have identified to Members of

1 the Legislature as being priority bills.

2 And then at the end of the year, a score card has
3 been prepared. And I understand that's been discontinued, but
4 for years that happened.

5 What I'm trying to ascertain is whether there's
6 any relationship between the bills that you said were important,
7 and the bills upon which you judged the Members of the
8 Legislature.

9 So far, you have not been able to provide me with
10 the information that is necessary to correlate those two
11 things.

12 Now, presumably the bills they were supporting or
13 raising as a priority, I guess for support or opposition as a
14 priority measure, those were presumably for the purposes that
15 you've articulated: for a better business climate in
16 California; for improved highways and transportation; and for
17 the people in California.

18 The fact is that the bills upon which the Members
19 of the Legislature were rated by you, and I cannot separate you
20 from your organization, given your extraordinary role with that
21 organization, those bills upon which the Members were rated are,
22 by and large, impediments to California's growth. They are
23 impediments to a healthy business climate. They are impediments
24 to constructing in California.

25 Until you can reconcile those two things, there's
26 no way that I can judge your performance or your adequacy to
27 serve in this position.

28 I heard the good words. But unfortunately, the

1 documents that are necessary, you've not been able to provide to
2 me.

3 MR. GUARDINO: Senator, thank you again.

4 As I mentioned, the documents were requested last
5 night actually after hours --

6 SENATOR ASHBURN: That's not true. In our
7 conversation, I asked you explicitly for what I just stated
8 here.

9 Is there any doubt in your mind about what I was
10 asking?

11 MR. GUARDINO: And again, I have all the e-mail
12 traffic between your office and myself.

13 SENATOR ASHBURN: I'm talking about our personal
14 conversation.

15 MR. GUARDINO: Right, and --

16 SENATOR ASHBURN: Was there any doubt in your
17 mind about what I was asking?

18 MR. GUARDINO: No, and I believe that that is
19 what we delivered. But let me go exactly to your --

20 SENATOR ASHBURN: Well, you did not deliver in
21 any manner whatsoever what I had asked for.

22 MR. GUARDINO: In the first e-mail --

23 SENATOR ASHBURN: You're being evasive now; you
24 were evasive then.

25 MR. GUARDINO: In my first e-mail back to
26 Mr. Bailey on your behalf, I even repeated what I had heard in
27 the conversation of what you wanted. I was not told that wasn't
28 the sufficient information.

1 Last night, he never said it wasn't sufficient
2 information. He said you needed additional information, which
3 again, we're happy to provide to you.

4 That is not evasive. That's direct.

5 Let me mention respectfully, though, your
6 comment. In terms of that four-year legislative record, which
7 we have discontinued, your votes were in agreement with our 210
8 member company CEOs nearly two out of every three times. I hope
9 you would concur that your votes two-thirds of the time with us
10 were good for the business climate and the families of
11 California.

12 I would also mention, I mentioned earlier, my
13 wife and daughter were here, I wish they agreed with me two out
14 of every the three times, but quite often they do not.

15 So, I think the record that you even had,
16 Senator, with our member company CEOs has been very, very
17 strong.

18 What I would mention as well, you mentioned that
19 you can't -- it's hard for you to separate my role as CEO of the
20 Silicon Valley Leadership Group with that of our 210 member
21 company CEOs. I respect that, and I honor that because I almost
22 always agree with those CEOs, or I wouldn't be working for them.
23 And I certainly wouldn't have pored 15 of my last 17
24 professional years into that organization.

25 In terms of those bills, I'm sure that reasonable
26 minds can differ as to whether each of those bills that we have
27 either supported, or supported to the extent that they found
28 their way onto that legislative record each year, I'm sure

1 reasonable minds can differ if you feel that they are all good
2 for the business climate in California.

3 The fact is that our members believe that they
4 are. I'm proud to represent them and happy to discuss
5 individual bills, especially your comment that somehow some of
6 those were bad for the aggregate industry in California.

7 CHAIRMAN PERATA: We're not going to do that
8 now.

9 As long as you are clear on what the Senator
10 would like further information, we will make sure that you get
11 that to him as quickly as we can.

12 SENATOR ASHBURN: And Senator Perata, I
13 appreciate that.

14 But even in this conversation and dialogue, for
15 you to express that it was late last night when you were asked
16 for these things, I'm looking at an e-mail from my office on
17 March 29th, on last Thursday, that asked for the specific
18 items.

19 Is that true or not true? What's the point of
20 trying to make it appear as if it's some last-minute effort?

21 I asked you for this two weeks ago. You even
22 expressed to me during our phone conversation, our interview,
23 that you were unhappy with me and the tone of my questioning,
24 and that I had in some way challenged your integrity. You
25 expressed that to me.

26 I don't know how I could have been more clear
27 then. I don't know how I could have been more clear on March
28 29th.

1 And for you to intimate to the Committee and to
2 those who are watching this hearing that somehow this is a
3 last-minute attempt is just wrong, and it impugns your
4 integrity.

5 MR. GUARDINO: I'm going to respond to your point
6 and not your last -- your words.

7 SENATOR ASHBURN: Why did you do that?

8 MR. GUARDINO: I'm looking at a stack of e-mails,
9 and I believe we have been incredibly responsive, as we will
10 continue to be.

11 CHAIRMAN PERATA: Gilbert.

12 SENATOR CEDILLO: On an entirely different note,
13 somebody bought up driver's licenses.

14 [Laughter.]

15 SENATOR CEDILLO: You know, we saw Senator
16 Maldonado was here at the beginning of the hearing, and Senator
17 Ducheny.

18 We're all representatives of the state and have
19 an interest in the bonds, a state interest, but we're also
20 elected locally. And the fact of the matter is, I am one of two
21 Members from Los Angeles County, one of two Members from
22 Southern California on this board.

23 My concern and my question for you is simply,
24 what can you say to me and to the people of Southern California,
25 a third of the population, a third of the congestion, tremendous
26 importance in terms of the ports, I think 80 percent of goods
27 coming out of there.

28 What can you say to me and to the people of

1 Southern California that will give us confidence that, while the
2 state has tremendous needs, that there is the appropriate
3 attention given to the concerns that we have in Southern
4 California?

5 This board has one representative from Southern
6 California. Everybody recognizes the talents, but still,
7 one-to-ten is still a little unfair.

8 So, I would like to hear from you something that
9 gives us confidence. You're all honorable men, and I'm
10 impressed by all of you, but if you could express that.

11 MR. GUARDINO: Senator Cedillo, if I may very
12 briefly respond.

13 What's impressed me, and I wouldn't be surprised
14 if it's impressed Jim, too, after just one meeting, the nine
15 people on the commission, we certainly bring knowledge and
16 perspective unique to the regions we're from, from being there.

17 But it is my impression, and certainly for
18 myself, that all of us see this appropriately as a statewide
19 role, with statewide needs.

20 And I for one will take this position incredibly,
21 incredibly strongly to know the needs throughout our state, so
22 that we're meeting the needs, that we're being fiscally sound
23 with all the funds, and delivering to strengthen all of the
24 regional economies that make up the California economy. And you
25 have my word on that.

26 SENATOR CEDILLO: I appreciate that.

27 MR. ZARIAN: Let me respond, Senator. That's an
28 excellent question.

1 Southern California is used to having two
2 representatives, and now it's incumbent upon me to work very
3 closely with my colleagues. I'll give you one example.

4 SENATOR CEDILLO: It's probably the Governor's
5 tremendous respect for you that he felt that to balance this
6 out, he needed to bring more people from other areas of the
7 state.

8 [Laughter.]

9 MR. ZARIAN: The Governor appointed me. I'm
10 still in limbo this afternoon, so I don't know where I'm going.

11 [Laughter.]

12 MR. ZARIAN: My response is that I need to do my
13 work with the rest of my colleagues, to express the needs of
14 Southern California.

15 The proof is that during the CMIA distribution,
16 that I was able to talk to several of my colleagues, explain to
17 them the importance not only of the 405 South, and the 605
18 Freeway, but then I had to share with them the need of the 405
19 North also.

20 Having expressed that, and having explained that,
21 and working with staff also, they recognized the need of 405
22 North.

23 So, it is not only important for my colleagues to
24 understand the needs. It is incumbent upon me to share the
25 needs and also to explain to them why is it so important for
26 Southern California to be recognized, as you said so well, that
27 we have a third of the population, a third of the congestion.

28 If Southern California's work is not done

1 properly, the rest of the state suffers. So, that's very
2 important, and I need to make sure that my work is done
3 properly.

4 MR. EARP: Mr. Cedillo, I'll go ahead and answer
5 real quick.

6 I feel a particular obligation to respond because
7 it might be argued that my seat came at L.A.'s expense. I don't
8 know if that's really the case or not, but the reality is, as
9 you know, this commission is structured. There's no -- even
10 though commissioners are spread out across the state, we're all
11 at-large commissioners, and we make our judgments based upon,
12 hopefully, on what's best for California.

13 I think the value of having people from
14 throughout the state is so that if there's a particular area of
15 information or knowledge that's needed on a particular region,
16 we can at least step up and say, "Yeah, this is what's going on
17 here."

18 When Mr. Zarian says, "Look, this is what's going
19 on in L.A. and this is what we need to do," there is complete
20 and total respect from the whole commission.

21 Just in the time that I have been with them, I'm
22 very impressed with the way that they handle their duties.

23 I am anxious. My blood pressure goes up every
24 time I cross the Tehachapis, and my knuckles get white because I
25 know what I'm in for when I'm down south. I don't live there,
26 but I've been down there lots of times, and I know what you're
27 dealing with.

28 I've already been in contact with MTA and will be

1 down there in three weeks. I'll spend a whole day with them to
2 find out just what their particular concerns are.

3 So, I'm going to do everything I can personally
4 to become knowledgeable with what is needed down there and the
5 other areas of the state that I am less familiar with.

6 You don't have to worry about how I'm going to
7 approach those responsibilities.

8 SENATOR CEDILLO: Thank you.

9 MR. CHALKER: First, Senator Cedillo, I know that
10 it probably won't make much difference, but I am a native
11 Angelino. So, I've struggled with and know first-hand the
12 transportation system in Los Angeles. My parents recently are
13 retired from there out to the desert, so I've been consistently
14 in touch with what's going on in L.A.

15 But I want to make really a rather bold
16 statement. I want to echo first the words, the earlier words
17 here that Jim mentioned to you about statewide approach.

18 But I think the viewpoint, we have a
19 representative government. And I think that instills with us
20 this feeling that we always have to have representative
21 representation, or demographic representation, on everything.

22 And I would say that the geographic domicile of
23 where the commissioners live should be, in truth, irrelevant
24 because really, transportation is a system. And when someone
25 rides on the I-5 from Orange County in ten lanes and gets to
26 L.A. County and it's six lanes, clearly there's been a mismatch
27 that would not have -- should not have occurred if all the
28 regional representatives were coordinating their actions.

1 And that's one of the things we're fixing with
2 CMIA, which was a very new approach to doing business with
3 transportation, a systems approach, so that the I-5 throughout
4 the length of the state, regardless of where you were traveling,
5 or how you were represented, is going to be an efficient
6 transportation system for everyone in the state.

7 So, I urge, and I understand the sensitivity that
8 the Los Angeles area has a great deal. We certainly heard it at
9 CMIA with the hearings that we had before the commission at that
10 time.

11 But I would really urge you that this commission
12 and my experience in two years is clearly oriented towards doing
13 what is best for the state as a whole, recognizing the
14 importance and the problems that certain particular regions
15 have, including Los Angeles with the ports and the amount of
16 congestion that does exist there.

17 But to imply otherwise, I think, suggests
18 favoritism, and I can say it certainly is not on the commission.
19 I have not heard it in my two years at all, either at the staff
20 or at the commission level.

21 SENATOR CEDILLO: For all of you, on this
22 question regarding labor, what other costs? Labor permits us an
23 ability to negotiate, but those aren't the only costs that are
24 involved, and they seem to me not to be the most volatile costs
25 in terms of the passage of time, when the cost of projects go
26 up.

27 This is really a place and an industry where time
28 is of the essence, but what are the other real costs that we're

1 not permitted to negotiate that impact the cost of the projects?

2 MR. ZARIAN: Senator, that's a very good
3 question.

4 One of the -- aside from the costs that you
5 mentioned, time delays, the bureaucratic costs. The cost, the
6 requirements from different organizations and different
7 governmental agencies that's required of us. And in the
8 construct business and elsewhere, that creates the delays.

9 MR. EARP: You've got right-of-way acquisition,
10 which is really a function of the real estate market. So, any
11 time that you've got the situation where you need to expand a
12 highway, and if it's got a bigger footprint, if you're not
13 expanding on the middle of the freeway but on the outside,
14 you've got to acquire some right-of-way. That's a function of
15 the real estate market. And as you know, real estate prices
16 have gone crazy in California.

17 The materials we've already addressed, I think,
18 but frankly, it's a world-wide economic problem. China has
19 created a huge demand for infrastructure materials, and there's
20 nothing we can do about it except try to produce more of our
21 own.

22 Then I think Mr. Zarian pointed out, there are
23 some costs associated with delays that come with -- I don't know
24 that all the regulations themselves are the culprit.

25 It's the ability of some organizations who really
26 just want to shut things down, who will use those regulations
27 unfairly, and use the court system to be able to hold projects
28 up. And as you know, the longer that you delay something, it's

1 obviously going to cost more because it costs more today than it
2 did yesterday.

3 MR. CHALKER: Briefly, I think the main factors
4 have been mentioned. Time, increase in right-of-way costs,
5 which I've seen personally increase at sometimes 50 percent of
6 what the original right-of-way budget is. That can equate to
7 elevating the cost of a total project, including design, and all
8 the environmental process, by 20 percent. We have no control
9 over that.

10 And then lastly, of course, the commodities issue
11 in terms of the materials and aggregate. That's been brought
12 up.

13 Clearly those three. And I would cite
14 right-of-way as number one, followed by time, and then the
15 materials.

16 SENATOR CEDILLO: Let me ask you, what is it that
17 you would think from us in the Legislature could do to help
18 address any of those concerns?

19 MR. CHALKER: I'm going to walk out on the limb
20 for you, Senator.

21 I think clearly in some of the discussions that
22 we've had here just in this hearing, if there are projects that
23 are considered of an urgency nature, the Legislature has the
24 power to try and shorten the time, or reduce the regulation that
25 applies to moving some of those projects forward. I think
26 that's clearly number one.

27 Number two, while it is not a panacea or a
28 solution to every problem, the ability to try and get the

1 private sector involved in the construction, the financing, the
2 design, build and design sequence, or even private ownership of
3 some items should be looked at very carefully.

4 Those would be the two areas that I would
5 encourage you to focus on.

6 MR. EARP: I totally agree with those two.

7 The other thing I would add is that there is a
8 whole host of bills right now that will -- that all have ideas
9 about how to spend the bond money differently, I think, than
10 what you all were thinking about a year ago. Now, maybe some of
11 those have merit, but I don't think they all have merit. And I
12 think it's going to take some real fortitude on your part to be
13 able to say, "Okay, you know what? These folks weren't around
14 to help us get the bonds passed, but they've got all kinds of
15 ideas on how we should spend it." You're just going to have to
16 say no.

17 And we as a commission, I think we've got to have
18 the fortitude to say, just as one example, you've got
19 four-and-a-half billion dollars' worth of CMIA money that went
20 through. Some of those projects, if statistics hold up, will
21 probably stumble along the way. And it will be up to the
22 commission to make the determination, if a project's problem is
23 big enough, that we actually have to pull it, and say, "Look,
24 you know what? There's ten other projects waiting in the wings
25 that didn't get funded, and they're ready to go, and they didn't
26 get the money, and you did, and you've screwed up. You can't
27 have the money."

28 That's a tough decision to make, because a

1 certain amount of money has already been spent when you get to
2 that point.

3 But we've just got to have the fortitude to make
4 sure that the worthy projects get through the pipeline, and we
5 get them there as quickly as possible.

6 SENATOR CEDILLO: Finally, let me say that I
7 appreciate your system-wide approach to this, because I think
8 that can't be forgotten.

9 I know that the 405, obviously, is a big concern.
10 You mentioned the 605, but there's also this little project that
11 I have in my district, this little stretch. I have this belief
12 that somehow we can complete this little project after 50 years,
13 you know, the last turn at the top of the jar, the 710 Freeway.

14 CHAIRMAN PERATA: Is that the one you wanted to
15 hide underground.

16 [Laughter.]

17 SENATOR CEDILLO: Yes, take it under, save those
18 old homes and the like.

19 And so with that, I'd just say that I thank you
20 for your view that this is a system-wide challenge for us, and
21 that we have to think in those terms.

22 SENATOR DUTTON: Thank you for being here and
23 willing to serve.

24 I certainly appreciate it. I know it's a tough
25 job.

26 As somebody who has more than just a casual
27 involvement with regards to the transportation bond, let me tell
28 you first of all, from my perspective, the 4.5 billion that we

1 were talking about, what that was sold to me as being -- and I
2 fully supported it, and I said this when we were out talking
3 around the state about it -- was that that was to enable you,
4 the CTC, to be able, Caltrans, to connect the dots.

5 It wasn't supposed to be anything about a fair
6 share. What it was, we all know we've got bottleneck issues and
7 problems. So, I appreciate all of you that are saying yes, we
8 want to look at this as a system, a system situation.

9 Your responsibility isn't to Rancho Cucamonga, my
10 home town; it isn't to Los Angeles; it's not to Bakersfield; and
11 it's not to San Francisco, but it's to the State of California.

12 And that 4.5 billion was put there so that you
13 could actually help connect dots and eliminate bottlenecks that
14 I was told exist up and down this entire state.

15 What we tried to do for the little projects that
16 some people indicated, because that was an issue. I mean, we're
17 120 Legislators up here, all expected to do some things for
18 their districts, so that's the reason why we put \$2 billion in
19 there for cities and counties.

20 I talked to each one of you about that. I want
21 to make sure that you don't play games with it, because it was
22 money intended to go to the cities and counties, because there
23 are little projects that, frankly, just don't ever seem to get
24 funded. And the small cities as well as the big cities all have
25 those kind of projects.

26 So, we're working on the language on that now.
27 It'll be coming out of this Legislature, I can guarantee you, on
28 a bipartisan basis.

1 But please, for my perspective, just make sure
2 that we don't -- I don't want to run rough-shod over the cities
3 and the counties because they were a critical part of getting
4 this bond passed.

5 The construction cost thing, from my perspective,
6 and Dave, correct me if I'm wrong, but I think one of the rising
7 costs right now, which I understand even exceeded material
8 costs, is in the area of liability insurance. So, if anything,
9 any thoughts or ideas that anybody has with regards to tort
10 reform or other things that we can do that may be of benefit to
11 actually help reduce the cost. But it's my understanding that
12 that's one of the big cost drivers right now.

13 I didn't mean just to make speeches here, but I
14 do have a couple of questions. Now I'm going to talk about one
15 of my favorite topics, and I know it's close and dear to Senator
16 Perata's heart, and that's the grade separations as it pertains
17 to goods movement. And I'd just like to have your thoughts
18 regarding goods movement, and particularly grade separations.
19 Share with me your thoughts on how that plays into the
20 transportation system.

21 CHAIRMAN PERATA: We're going to give you a few
22 minutes to think about it because her fingers are going to fall
23 off. We'll take a ten-minute break and start again.

24 [Thereupon a brief recess
25 was taken.]

26 CHAIRMAN PERATA: The question under
27 consideration is on grade separations. Larry, why don't you
28 start.

1 MR. ZARIAN: Sure.

2 Senator Dutton, your question on grade separation
3 is a very important one. We are -- we are going through that
4 where I live.

5 I think it's essential. It's important for
6 several reasons.

7 One, I think for goods movement. The time it
8 takes to get goods from one end of the state to the other, to
9 get to the ports.

10 And the other is safety issues, when it comes to
11 safety. And we have experienced terrible accidents without
12 grade separations.

13 So, I'm in favor of that, and I feel that it's
14 essential that we do that. And it's essential that we look at
15 it, and look at grade separation very seriously.

16 MR. GUARDINO: From a health and safety
17 perspective, I completely agree.

18 I also just want to thank Senator Dutton for your
19 leadership, not only on Prop. 1B, but also on Prop. 1C, the
20 housing -- the housing bond. For us in high-cost areas that are
21 throughout the state, the link between traffic and long commutes
22 is well known and really hurts our economy. So, I thank you for
23 your leadership on both.

24 And with only \$250 million out of 19.9 billion
25 allocated specifically for grade separation, we have to really
26 stretch every dime we can.

27 SENATOR DUTTON: Well, keep in mind, too, that
28 when we were talking about the goods movement portion, the 3

1 billion, that wasn't just -- that 250 was separate and apart,
2 which wouldn't necessarily have to do with goods movement,
3 because there are some public safety issues regarding grade
4 crossings elsewhere in the State of California. So, that was a
5 separate pot of money. I just want to remind you about that.

6 MR. GUARDINO: Yes.

7 MR. CHALKER: I think from the good movement
8 point of view, we have a real issue here in trying to deal with
9 the railroads on this grade separation. They don't have any
10 incentive to financially participate with us, and I don't know
11 how we can change that, frankly.

12 They've got the right-of-way in moving the goods
13 in containers, but in those areas where we have and need grade
14 separation, there's also a lot of truck traffic that could be
15 involved, not to mention the safety aspect that my other two
16 fellow commissioners have mentioned.

17 So, I think we really need to try and see if
18 there's not some way that we can try and get the railroads more
19 involved with this. I don't know how we're going to do it, but
20 I wish we could figure it out.

21 MR. EARP: I think every Californian loves grade
22 separations, including myself. There's not enough of them, and
23 you've got that 250 million that you pointed out, that's one
24 pot, but that's not all the money that could be used for that on
25 the goods movement side.

26 The whole intent -- and this, to me, is the
27 challenge of -- that we face as we look at these pots of money
28 in 1B. You've got about \$2 billion of goods movement money. If

1 we thought the fight over the \$4-1/2 billion in CMIA money was
2 -- was a food fight, I think that we're looking something at
3 least as tough on the goods movement side.

4 You could spend a lot of that money just on grade
5 separations. You could spend a lot of that money just in the
6 Long Beach Port. You could spend it all in the Long Beach Port.

7 And I think Mr. Chalker pointed out part of it,
8 we've really got to harness the private sector in on this, and
9 they need to be part of the solution. There's not enough money
10 there to get the job done. And even if we -- that \$2 billion
11 has to help leverage at least double that amount, somehow or
12 another we've got to do that.

13 Some of that's beyond our purview. It's going to
14 have to get done in other channels, but it has to get done.

15 SENATOR DUTTON: Well, one thing to keep in mind,
16 and I certainly pledged my support earlier to Senator Perata,
17 and I'm assuming we're going to do a little bit of this on our
18 trip coming up to D.C., but the federal government definitely
19 needs to step up to the plate and help pay its fair share of
20 that responsibility. Because those goods, as all of you know,
21 that come into the ports for the most part go places outside of
22 California.

23 So, it's a nation situation. It's something that
24 the federal government definitely needs to step up to the plate
25 and help deal with this issue as well.

26 But I think part of the reason why I was
27 motivated to work on this bond is because I think sent a strong
28 message back to D.C. that California is serious about its

1 transportation needs, and now we want to make sure that we get
2 our fair share here in California so we can help deal with the
3 quality of life issues for our people.

4 Thank you.

5 SENATOR PADILLA: Thank you, Mr. Chair.

6 Just sort of one question in your arena, but a
7 couple of comments beforehand.

8 As the other Member from Southern California, and
9 I appreciate the opportunity I had to chat with each one of you
10 individually about the concern. Not to be Los Angeles-centric
11 necessarily, Mr. Dutton, but coming from the region that
12 represents 28 percent of the state population and 33 percent of
13 documented state congestion --

14 CHAIRMAN PERATA: How much of the undocumented?

15 [Laughter.]

16 SENATOR PADILLA: -- as far as our sea-borne
17 containers go, 80 percent of cargo traffic.

18 I, too, had the concern individually about your
19 true statewide responsibility here. From my observations, not
20 only are we down to one member of the commission from the Los
21 Angeles area, but even to be more specific, Mr. Zarian is not
22 even from the City of Los Angeles but from Glendale.

23 I don't hold that against him. His track record
24 shows that he knows how to work with everybody in the region, on
25 both sides of the aisle, to his credit.

26 But just know that for myself and many others in
27 the region, that is a question and a concern.

28 But I appreciate what you've all articulated

1 today in terms of a commitment to recognizing that. I know
2 most, if not all, of you are already scheduled to come with CTC
3 and/or MTA to visit the region, and I appreciate that.

4 I also thank Mr. Perata for having put on record
5 the concerns about combining or incorporating the desire to
6 reduce greenhouse gas emissions into your thinking and decision
7 making at CTC. I look forward to following specific
8 deliberations and policy changes that will come in the
9 forthcoming years.

10 So, the only question I'll toss out that hasn't
11 been raised already, either in the questionnaires or in this
12 Committee, is one about evacuation plans. And I raise it only
13 because I initiated a process back in Los Angeles when I was on
14 the City Council there, post-Katrina, when from a national
15 survey, it was highlighted that most urban areas do not have any
16 sort of cohesive evacuation plan. Not just whether or not
17 there's significant flooding, but in the case of a terrorist
18 incident, or any other natural or man-made disaster.

19 If there's a need to evacuate an urban area, what
20 planning do we have in place? What capacity do we have in place
21 to orderly evacuate significant urban areas?

22 I don't know if you've given it any significant
23 thought. If not, I'll ask you to in the coming months.

24 MR. ZARIAN: Senator, that's -- that's a very,
25 very important question, and sometimes we tend to forget.

26 I remember during the 1994 earthquake, when we
27 were talking about evacuation plans, we in our city and several
28 cities in the San Fernando Valley had to deal with that. And

1 that, to me, is extremely important.

2 I believe that, to me, you have just awakened me,
3 just opened my eyes, that we are not paying much attention to
4 those. September the 11th was an example. Katrina is another
5 example.

6 I believe possibly this is something that we
7 ought to work with the Legislature. Have the Legislature give
8 us direction, work with us, and create a committee of some type
9 and have us look and see where we could find the proper dollars
10 in order to do that. It is very important.

11 I'm very open to that, and I believe that we
12 would not only do ourselves -- it would be something that is
13 absolutely essential and important that sometimes we don't think
14 about, because it doesn't happen every day. We don't have to
15 deal with it everyday. It's not like you drive from work to the
16 office, and back to the office again. If we only think about
17 evacuation, we only think about safety, when the tragic
18 situation happens, like Katrina and others.

19 But we need to be prepared, and I'm very open to
20 seeing what -- what support we can get, and what information we
21 can get out of the Legislature also.

22 MR. EARP: Senator, can I say you look really
23 good today, by the way? Very nice suit you've got on there.

24 [Laughter.]

25 MR. EARP: I don't know if that'll help me at
26 all, but I was looking for my apple.

27 SENATOR PADILLA: I was undecided, but --

28 [Laughter.]

1 MR. EARP: It's my -- this is not my expertise.
2 But I do believe there's some money in 1B for security and
3 emergency planning. I think it's \$100 million is in there.

4 I don't -- I think there are some constraints on
5 it, but in terms of where we look for some of the money, that
6 would probably be the first place to go.

7 But it's not just having the money. It's also
8 being -- I mean, that's money that really needs to be -- what
9 you're talking about really needs to be focused on -- this is
10 one place where you're going to have to do -- spend money on
11 studies. You're going to have to figure out how to do this, and
12 then what's it going to cost to do implementation.

13 So, it may end up being that there's a lot more
14 than 100 million needed to implement, but the idea of trying to
15 deal with that in an urban area like L.A. is mind-boggling. And
16 we definitely are hiding ourselves -- our heads in the sand if
17 we don't deal with it.

18 SENATOR PADILLO: From your limited time on the
19 commission, Mr. Zarian's been there for some time, you mentioned
20 it would be great to direct the CTC to do this.

21 Can you comment on being able to do that with
22 existing funds?

23 MR. ZARIAN: Yes, that. And when we talk about
24 \$100 million, I don't think that's enough money. We're going to
25 need much more money in order to do it properly. The \$100
26 million is just -- will scratch the surface. There are a whole
27 lot of -- a host of things that can be done.

28 We need to learn and work and understand from --

1 from people that were involved with Katrina. And when you look
2 at the dollars that they are spending in order to resecure their
3 city and to do the things that they have to do with the levees,
4 and everything else, \$100 million is just a beginning.

5 MR. CHALKER: Senator, if I can shed a little
6 light on it, having the benefit of a quick side-bar here with
7 our Executive Director.

8 First, in doing local evacuation and regional
9 evacuation plans, it's something that has to be done at the
10 regional planning level. And here at the state, the Office of
11 Emergency Services generally has the primary purview and
12 leadership role in developing those plans.

13 But in the CTC, where our input can come is, we
14 do provide guidelines to the regional planning agencies, the
15 regional transportation agencies, in the method in which they
16 develop their regional transportation plans, which are the
17 long-range plans for how they're going to lay out transportation
18 systems in their region.

19 And we can certainly ask them to give
20 consideration and include the -- the thought of an evacuation
21 plan as they develop those regional transportation plans, which
22 hopefully will make for better infrastructure being used as both
23 they and Office of Emergency Services put together those --
24 those regional plans for evacuation.

25 Also, Caltrans, I think, is working to a lesser
26 degree on addressing this issue. And while I don't want to
27 commit the Executive Director to come in, I'm sure they would be
28 happy to share with your office or any pertinent committee the

1 information on what they're doing in this area.

2 MR. GUARDINO: Senator, thank you.

3 It's fascinating that we live in a state known
4 for fires, floods and faults, and we're not very good about
5 evacuation planning.

6 In 1989, we suffered a tremendous earthquake
7 throughout not only the nine-county Bay Area, but far beyond.
8 And I was a resident and a worker in Monterey County at that
9 time and spent the next 96 hours on a team with almost no sleep,
10 trying to find places for people to live who had been displaced
11 from that earthquake way down in Monterey County and the Salinas
12 Valley.

13 So, your comments really resonate with me. I
14 think they obviously do with my colleague commissioners as well.

15 I think making sure the state is coordinating
16 with the regional levels, who best know what they should be
17 doing and can coordinate as regional entities, is a wise one.

18 The organization that I'm proud to be associated
19 with actually did that after the 1989 earthquake and again in
20 around 1995, after Northridge, about what we could be doing as a
21 subregion within the State of California. Not only public
22 sector entities, but the private sector and its role to keep its
23 operations going to drive our economy and to take care of the
24 health and welfare of their workers in case of a disaster.

25 So, it's not solely the public sector and our
26 infrastructure, but it's everyone in California. So, I think
27 we're all committed to doing it.

28 MR. EARP: I just need to correct myself a little

1 bit. Being an editor, when you make a mistake you've got to own
2 up to it quick.

3 The 100 million that I was looking at was in
4 response -- was connected to PUC and grade separations. But
5 there is a billion dollars in the transit system Safety,
6 Security and Disaster Response Account.

7 Now that, you were involved in the intent of
8 that. That may not address fully what Senator Padilla is
9 talking about, but maybe you could give us an idea.

10 SENATOR DUTTON: Well, part of the thought on
11 there, and this isn't 100 percent of it, but there's a real
12 concern about the port activities and some of the security,
13 because less than five percent of the containers that are coming
14 through the ports of Long Beach and Los Angeles do we really
15 know for sure the contents.

16 Plus, there's other security issues. So, if
17 you're going to look at that kind of an operation, considering
18 the magnitude or the population based that's down in that area,
19 then -- but the specific details as to exactly what you can and
20 cannot do with it, I can't remember 100 percent. But it is all
21 tied to security issues, and systems, and things like that, that
22 they indicated they needed money for.

23 SENATOR PADILLA: Thank you, and for the comment
24 on my appearance.

25 [Laughter.]

26 CHAIRMAN PERATA: This now the audience
27 participation portion. If anybody here would like to come up
28 and speak in favor, please do so.

1 MR. KATZ: Senator Perata and Senators, my name
2 is Richard Katz. I'm here as a Board Member of the MTA, and
3 also on behalf of the City of Los Angeles, to strongly support
4 the nomination of Commissioner Zarian as well as the other
5 commissioners. We look forward to working with all the
6 commissioners.

7 And we're pleased that Commissioner Earp is
8 coming down to take our tour. We're basically going to park him
9 at either the four level or the 405-101. It's not a very long
10 tour, but it sort of makes the point, and work with all of you.

11 You all showed tremendous leadership and did a
12 lot of work to get a lot of money passed by the voters. And
13 we're going to work closely with you to make sure it gets on the
14 streets as fast as possible.

15 And Senator Perata, I appreciate the opportunity
16 to be here and say hi.

17 CHAIRMAN PERATA: Do you have any baby pictures?

18 MR. KATZ: And I have baby pictures, too.

19 CHAIRMAN PERATA: Stick around, then.

20 MR. KATZ: Most people are more interested in the
21 baby pictures than what I have to say.

22 [Laughter.]

23 CHAIRMAN PERATA: Thank you.

24 MR. HENNING: Patrick Henning with the California
25 State Council of Laborers.

26 You know, one of the biggest things for me was to
27 hear us here about tunneling and grade separation projects. I'm
28 going to have a pension when I retire.

1 [Laughter.]

2 MR. HENNING: We're in strong support of both
3 Mr. Guardino as well as Jim Earp.

4 We have had a long-standing as a union
5 relationship with Mr. Earp that stretches several years. He has
6 some of the largest experience in the construction industry,
7 over 30 years in the construction industry, and has been
8 instrumental not only in helping pass these bonds, but has been
9 there since the beginning, since they were a twinkle in Senator
10 Perata's eye, and has shepherded not only the bond process, but
11 also state and local processes that have been instrumental in
12 keeping the state moving for a long period of time.

13 Thank you.

14 MR. ACKERMAN: Mr. Chairman and Members of the
15 Committee, Dave Ackerman, representing the Associated General
16 Contractors.

17 I'm here specifically in support of a long-time
18 friend, Jim Earp, his nomination to the Commission. I have had
19 the pleasure of working with Jim in the campaign activities that
20 you've mentioned, Senator Perata, and find Jim to be of utmost
21 credibility and standing in those -- while I'm representing the
22 management side of the table, we work very, very closely with
23 our labor colleagues on these types of projects, and I see
24 absolutely no conflict with Mr. Earp's appointment.

25 I also support the appointment of the other three
26 individuals, two of which have gone through quite an experience
27 at the end of last month. And I think that process, that
28 experience, will improve the process as we go through the other

1 multi-individual projects and categories that are going to be
2 approved by the commission.

3 Your legislation, Senator Perata, gave the
4 commission both authority and responsibility unlike it has had
5 before in the history of the state, and I think these
6 commissioners are up to meeting that challenge. And they will
7 have to meet it, because we have more to do after these bond
8 funds are done. We're not through with the process, and the
9 commission has a tremendous responsibility in order to keep that
10 faith with the voter, or we'll never be able to go to the voters
11 again.

12 So, I endorse the nominations. Thank you.

13 MR. PEDROTTI: Senators, Kevin Pedrotti. I'm
14 representing the Engineering and Utility Contractors
15 Association.

16 We've had a long-term relationship with Jim Earp
17 and his role, and we endorse his appointment to the commission.

18 Thank you.

19 CHAIRMAN PERATA: Opposition? Didn't think so.

20 Let me just sum up with a couple of observations.

21 I know that there's always a dynamic tension
22 between various regions of the state. It used to be
23 north-south; now it can be coast-inland. It can be the Inland
24 Empire versus L.A., or L.A. versus the rest of us.

25 But L.A. has got a large presence here in the
26 Legislature by virtue of the numbers. And I remember when we
27 were still trying to build the Bay Bridge, but in the earliest
28 stages of trying to build it, I had this ongoing debate with

1 Kevin Murray, who was talking about it being "your" bridge up in
2 Northern California.

3 And I pointed at that point that it was a little
4 shortsighted that he would view that as just something that
5 belonged to Bay Area residents --

6 He's changed his view a lot lately since he's no
7 longer a Member here. He's now a lobbyist.

8 [Laughter.]

9 CHAIRMAN PERATA: But nonetheless, at that point
10 he held a uniquely provincial view.

11 We always have to rely upon the Legislature to
12 provide a statewide view. It's difficult for sure, but we have
13 that responsibility.

14 But it is clearly an obligation that you have.
15 As soon as you got sworn in as members of the CTC, you've really
16 checked your residency at the door. You don't live someplace;
17 you're really residents of the state.

18 And the second observation is, even though we
19 have many new Members of the Legislature who were not part of
20 the discussion, the debate, and the final vote, they all have
21 the same vote that I have, the same vote that Bob Dutton has,
22 the people who were here, negotiating these things.

23 And so, however they see fit to support, or what
24 they don't support, counts equally with everyone else. So a lot
25 of what we have to do is, to try to keep people faithful to what
26 it was this past Legislature gave to the voters. And that's a
27 legislative responsibility; one that we'll try to dispatch as
28 well as we can.

1 But we are very mindful that we serve here at the
2 grace of the individuals who've put us here. And there are
3 really no equals among us. We all have that vote.

4 So, part of your responsibility, in turn, will be
5 to, when various Members write to you or call you or come visit
6 you and say, "How about this? How about that?" It will be for
7 you to take the longer view and to say what it is that you
8 believe your responsibility and obligation is, knowing fully
9 well that they can never vote against you, as they can against
10 all of us who sit here.

11 Not that there's ever any quid that goes into our
12 discussions, but you're free of that.

13 You have a tremendous responsibility. I want to
14 thank all of you on behalf this Committee for being willing to
15 do it. For those of you who have, I think the two members who
16 have been there have done an outstanding job, and we're very
17 fortunate to have all of you.

18 And with that, I would entertain a motion.

19 I will ask that the information that Senator
20 Ashburn has requested of Mr. Guardino be in his hand in a timely
21 manner. But in all events, the nomination on the Floor will not
22 be taken up until he has had that information for a period of
23 time to review it to his satisfaction.

24 So with that --

25 SENATOR ASHBURN: I would ask that we separate.

26 CHAIRMAN PERATA: That will be understood.

27 SENATOR ASHBURN: That we vote on Mr. Guardino
28 separately.

1 CHAIRMAN PERATA: Okay.

2 On behalf of Larry, Curley and Moe --

3 [Laughter.]

4 CHAIRMAN PERATA: Excuse me if I've been informal
5 throughout this, but it's kind of hard for me to call you
6 Mr. Chalker. We've done this for awhile.

7 So, for Larry, and Jim and John, we have a motion
8 to approve. Call the roll, please.

9 SECRETARY WEBB: Cedillo.

10 SENATOR CEDILLO: Aye.

11 SECRETARY WEBB: Cedillo Aye. Dutton.

12 SENATOR DUTTON: Aye.

13 SECRETARY WEBB: Dutton Aye. Padilla.

14 SENATOR PADILLA: Aye.

15 SECRETARY WEBB: Padilla Aye. Ashburn.

16 SENATOR ASHBURN: Aye.

17 SECRETARY WEBB: Ashburn Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Five to zero.

20 CHAIRMAN PERATA: And we have a motion to approve
21 on Mr. Guardino. Call the roll.

22 SECRETARY WEBB: Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Dutton. Padilla.

25 SENATOR PADILLA: Aye.

26 SECRETARY WEBB: Padilla Aye. Ashburn. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Three to Zero.

1 CHAIRMAN PERATA: You are all confirmed here.
2 Your nominations are being sent to the Floor for Senate
3 confirmation. Congratulations and again, thank you.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 3:50 P.M.]

8 --ooOoo--
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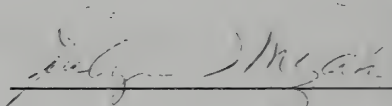
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of April, 2007.


EVELYN J. MIZAK
Shorthand Reporter

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APPENDIX

APR 03 2007

Appointments

April 2, 2007

Ms. Nettie Sabelhaus
Rules Committee Appointment Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus,

I am pleased to provide a response to the following questions.

1. *Do you believe some programs, as compared to others, are better established and have a quicker delivery time within the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006? Please identify and describe these programs.*

I believe that some programs within the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 are better established and have a quicker delivery time as compared to others. The commission rapidly programmed the Corridor Mobility Improvement Account (CMIA) funds and some projects will begin construction in calendar year 2007. Projects under the State Route 99 Program have also been programmed although the earliest project will not begin construction until summer, 2009. Other programs which operate under existing guidelines and regulations, such as the state transportation improvement program (STIP) and the state highway operation and protection program (SHOPP) are well established and will provide a very quick delivery time versus newly established programs whose guidelines and criteria for project selection have yet to be determined by the commission or the Legislature. Some of these newly established programs may experience slower delivery times despite the immediate need for their projects; these programs include the Trade Corridors Improvement Fund and the State-Local Partnership Program. For example, the commission may not program projects in the Trade Corridor program until early 2008, possibly resulting in project delivery times beyond 2010.

2. *What challenges do you see for the commission in implementing Proposition 1B? Do you have any suggestions for statutory changes related to Proposition 1B?*

Several challenges exist in the implementation of Proposition 1B. One challenge lies in selecting projects for programming from a large backlog of uncompleted transportation projects that are negatively impacting traffic congestion, goods movement and the state's economy; these uncompleted projects are also responsible for contributing to air pollution, reduced productivity and a degraded quality of life. A second challenge for the commission relates to personnel staffing. Staffing issues focus on both the number and knowledge level of additional staff members that may be required to ensure the commission's ability to perform the proper analysis of proposed projects to accurately determine the transportation and environmental benefits associated with these projects. A third challenge lies in completing program guidelines and receiving policy guidance from the Legislature for several specific programs such as the Trade

Corridors Improvement Fund and the State-Local Partnership Program. Specific questions relating to 1.) matching funds, and 2.) the integration of greenhouse gas reduction as a factor in project selection need to be addressed by the commission and the Legislature.

3. *Does the commission yet have any detailed data on which specific projects would be funded with this level of appropriation (\$7.7 billion)? Do you anticipate this data to be forthcoming?*

The commission does not yet have any detailed data on which specific projects would be funded with the proposed level of appropriations. However, I do expect this data to be forthcoming before the end of FY 2006-2007 since the commission will have programmed many projects for several established and newly created programs such as the STIP Augmentation, SHOPP Augmentation, CMIA, and State Route 99 Corridor.

4. *Which Proposition 1B programs would you identify as early candidates to receive an appropriation of funds for Budget Year 2007-2008?*

I would identify the following Proposition 1B programs as early candidates to receive an appropriation of funds for Budget Year 2007-2008:

- ☐ Corridor Mobility Improvement Program (CMIA)
- ☐ STIP Augmentation
- ☐ Route 99 Corridor
- ☐ SHOPP Augmentation

5. *What is the key objective of the commission's adopted CMIA program?*

This year's allocation of funding to traffic congestion was very important to the state. First, it was a departure from the 'business as usual' approach involving a fair-share formula. The allocation involved much more of a 'systems' approach to the problem of relieving traffic congestion in my opinion. Secondly, the key objective was to select projects that would result in the greatest reduction in traffic congestion in the shortest period of time for the largest number of motorists. This objective also emphasized that selected projects should be completely funded through construction since an incomplete project is of no value to the motoring public.

6. *What is your assessment of the commission's performance in adopting the CMIA program? What, if anything, would you do differently?*

The commission's performance was primarily driven by the time constraints imposed by state statute. Regional planning agencies, Caltrans, and the commission all operated under a very tight time schedule further aggravated by the pressures to select \$4.5 billion in projects from 147 projects totaling \$11.3 billion in size. Although the commission may have benefited from additional time to develop its recommendations, I do not believe that the outcome would have been significantly different. However, an additional 30-60 days would have allowed the commission to better communicate with nominating agencies concerning their various projects and to perform its review process in a less hectic manner.

7. *What actions do you propose to ensure that CMIA projects remain on schedule and under budget?*

The commission has actively taken a role in this area with the formation of a project delivery council and the establishment of accountability procedures throughout the program. The council will be composed of commission staff and representatives from Caltrans and various regional agencies who will be charged with reviewing all CMIA projects on a quarterly basis with an emphasis on schedule and budget factors. The council will report its findings to the commission, which may then take appropriate action. I believe that the commission will seriously consider taking an active management role in projects that fail to meet established funding and delivery milestones. Additionally, the establishment of a simple tracking system to measure a project's progress against the final schedule and cost estimates provided by the project's nominating agency will be a key tool in monitoring MIA projects. Such a system would provide a good overview of the entire CMIA program while also providing key information on each project's status.

8. *Do you have any concerns with how public transit funds are distributed in the STIP process? Do you have any suggestions for how these funds might be distributed more efficiently?*

Although the STIP allocation process for distributing transit funds is working well, over \$600 million in transit funding capacity were not used by regional planning agencies during the 2006 STIP cycle. This funding capacity was not utilized because a primary source of public transit funds is very volatile, creating uncertainty in the amount of funds available each year for public transit projects. This uncertainty has discouraged regional planning agencies from proposing transit projects versus highway projects whose funding amounts are generally more predictable. A primary source of this volatility is the 'spillover' account, which may annually contribute up to hundreds of millions of dollars into the public transit account based upon the level of gasoline prices at the pump. I would suggest that the Legislature give careful consideration to eliminating the 'spillover' entirely because this would serve to increase the predictability of transit funding capacity in the future.

9. *Have we sufficiently taken into account greenhouse gas emissions when planning for transportation? What strategies do you have for reducing emissions?*

In my opinion we have not accounted for greenhouse gas emissions when planning for transportation. This is a relatively new issue for the transportation community and the commission, along with the entire industry and prominent stakeholders, has only just begun to address this issue. The challenge lies in developing, evaluating and implementing emission strategies that are successful, yet practical, in reducing greenhouse gas emissions while avoiding a severe negative impact to the state's economy. I believe the primary focus must be on the vehicles that use the transportation system, whether they are automobiles and trucks or the locomotives and buses used in mass transit. A secondary focus must be on the planning of an integrated and efficient transportation system that moves people and goods with the least amount of energy consumption. Finally, a sound and accepted scientific methodology must be developed to measure the benefits of the various emission strategies. All of these factors, and possibly others, must be considered as the commission develops updated guidelines for the drafting of regional transportation plans (RTPs) by regional agencies.

10. What strategies would you recommend to achieve greater success in reducing emissions related to transportation?

My initial recommendation to achieve greater success in reducing emissions related to transportation focuses on improving the efficiency of the transportation system and in stricter vehicle emission standards. These areas hold the promise for the greatest gains in the shortest period of time. The former will impose a greater financial burden on the public sector while the latter will impose a financial burden on the private sector; in my view, this represents a partnership approach to addressing the issue. Additionally, better land use planning and the increased use of renewable energy, where economically feasible, are strategies that will also contribute to reducing emissions over a longer timeframe.

11. How can the commission, in evaluating the merits of projects seeking state funds, better assess the emission impacts of these projects?

The commission must advocate for a sound and accepted scientific methodology that will accurately assess the emission impacts of proposed projects. This should include the use of a statewide standard for modeling and forecasting emission impacts by the regional agencies. An ideal model will have some flexibility to allow for the wide variety of situations that exist throughout the state, just as the project cost estimate model used by Caltrans allows for the use of different material and labor costs in each region of the state. Additionally, this assessment must consider the emission impact over a definitive time period, preferably measured in decades rather than years.

Thank you for this opportunity to share my views on various transportation issues. I look forward to the confirmation process and am available at your convenience to provide additional information.

Respectfully Submitted,



John Chalker

1. Please summarize the qualifications that make you a good candidate to serve on the California Transportation Commission.

For the past nine years as executive director of the California Alliance for Jobs, my number one priority has been focused on securing adequate funding for California's transportation system. On the local level, I developed an aggressive program to help counties organize and develop campaigns to obtain or extend transportation sales tax measures. In the past seven years, under my leadership, the Alliance has played a crucial role in generating more than \$14 billion in local and regional transportation sales tax funding. At the state level, we were instrumental in passing Proposition 42 in 2002 and in 2006, the Alliance launched a statewide initiative to protect Prop. 42 funding. Our initiative campaign became the catalyst for Proposition 1A. I also chaired the campaign that was successful in passing Propositions 1A-1E in November 2006.

2. What goals do you want to accomplish during your tenure as a member of the California Transportation Commission?

Thanks to the passage of Propositions 1A & 1B, the CTC actually has the opportunity for the first time in many years to oversee the allocation of a significant amount of funding for the state's transportation system. Having played a key role in that campaign, my first objective will be to provide a vote and a voice on the Commission that will help insure these critically needed funds are expended in a manner that keeps faith with the voters. Both 1A & 1B have provisions that direct significant portions of funding to mass transit projects as well as streets and roads. Additionally, 1B contains provisions for air quality, goods movement and port security. As a commissioner, I believe I have an obligation to implement the mandates written into 1A & 1B, as well as any subsequent legislation that provides additional criteria for the expenditure of these funds.

3. What do you perceive to be the most important issues confronting the Commission in both the short and long term?

On the short term, I believe project delivery is critical. In my first meeting last month, the commissioners began to establish a process for review and accountability to insure local agencies are implementing their allocations of Prop. 1B money on time and within budget. We must be firm with local agencies who come back with requests for extensions or more money to complete projects. While there are occasions when granting these requests is warranted, I believe we must also have the fortitude to withhold funding if an agency is clearly failing to deliver a project.

Insuring project delivery also positively impacts what I believe to be our most pressing long term problem of too few dollars chasing too many critically needed projects. Despite the unprecedented magnitude of Prop. 1B, we are only scratching the surface of meeting California's long term transportation needs. There is no way we can legitimately go back to the voters and ask for more money if we fail to deliver on the first \$20 billion.

Additionally, if we really want to bring more money to the table, we must leverage our tax and bond dollars to the fullest by finding a way to utilize public-private partnerships. PPPs are being used successfully in other states and throughout the world. I believe they can be structured in a way that protects worker rights, meets environmental goals and enables private entities to make a reasonable profit while bringing tangible benefits to those who are willing to pay for the services provided – all without raising taxes.

4. What does the Commission hope to achieve with performance measures?

Performance measures are a vital tool for insuring that taxpayers are getting the most project delivery for their tax dollars, but they are also important for achieving other, less fiscally focused objectives. For example, Prop. 1B has goals for achieving greater mobility, congestion relief, efficient project delivery and connectivity, which all have a direct fiscal connection, but which also have quality of life, economic and social outcomes. Prop. 1B has plowed new ground with additional goals to encourage better land use policies and money devoted to ensuring that projects built to move goods more efficiently will not do so at the expense of cleaning up our air.

**5. In what program areas is the Commission using performance measures?
How will the Commission monitor to determine if the performance
measures are being met? Are there any environmental program
measures?**

The CTC has some performance measures in place for the STIP, SHOPP and TCIF programs. These have been in place for some time and at this point, I am unaware of any serious shortcomings that would require wholesale revamping of the performance measures for these programs. However, as we begin to lay the groundwork for implementing the Prop. 1B bond money, we will hopefully find new ways to improve accountability that may be applied to the older programs, as well as Prop. 1B.

At our March meeting, the commissioners reviewed proposals for the oversight and accountability of the CMIA program and directed staff to respond to some of our concerns as they relate to giving us the tools to track project delivery on a quarterly basis. One of my primary concerns is identifying potential trouble spots early. The CTC moved a lot of money through the door on Feb. 28. It stands to reason that some projects are going to stumble along the way. We need to know when this happens and have the tools to determine if the troubled project can be corrected or if it needs to be set aside.

In terms of incorporating an environmental component into performance measures, it appears to me there is significant room for improvement. However, as the commission is now working on Senator Perata's request that the commission adopt guidelines for incorporating AB32 greenhouse gas emission reduction goals into state and regional transportation plans, I believe we will make significant progress in this area.

- 6. Do you believe some programs, as compared to others, are better established and have a quicker delivery time within the Highway, Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006? Please identify and describe these programs.**

The CMIA funding has already been allocated and the challenge here will be project delivery, as mentioned above. I am also confident the STIP augmentation (2.0 billion), Hwy 99 (1 billion) and the \$750 million for the SHOPP program will for the most part go smoothly. The Trade Corridors Improvement Fund (\$2 billion) still needs some legislative work before it is ready for prime time and it is not entirely clear to me what role the CTC will have in allocating and overseeing the TCIF money until the legislation connected to it becomes law.

- 7. What challenges do you see for the Commission in implementing Proposition 1B? Do you have any suggestions for statutory changes to Proposition 1B?**

As a new member on the commission, I can already see a number of significant challenges to implementing Prop. 1B, but I am sure there are others just over the horizon that will come as a surprise.

One challenge for the commission is to be clear on what projects are eligible for each pot of bond money and exercise discipline and consistency in funding projects within those criteria. For example, there was \$11 billion in hopeful projects chasing \$4.5 billion in available CMIA money. Obviously, a lot of worthy projects didn't get funded. A few of those projects may be legitimate candidates for other pots of money, but we must resist the temptation to backfill the other programs with CMIA projects that didn't make the final cut.

Another challenge touched on earlier will be monitoring project delivery and being firm with local agencies who received an allocation but are not delivering. We must have the fortitude to pull the money away from a project that is not getting done. This is hard to do, because by the time it is clear a project is not making the grade, a great deal of time and money has already been spent on the project. On the other hand, we can't have a program where awarding agencies assume that once they have received an allocation, the money is theirs.

Other challenges are more technical, such as developing criteria for what qualifies as a local match under the \$1 billion state-local partnership program and how to implement reasonable air quality guidelines on the bond money and also maintain effective project delivery.

Defining the role of design-build and maximizing the public bond money by incorporating public-private partnerships have proven themselves to be thorny issues, yet we must find ways to use these tools appropriately in order to have a more cost effective program.

- 8. The Governor's Budget for 2007/08 includes appropriations of more than \$7.7 billion worth of Proposition 1B bond funds. Does the Commission yet have any detailed data on which specific projects will be funded with this level of appropriation? Do you anticipate this data to be forthcoming?**

The commission, to date, does not have data on a specific list of projects to be funded by the Governor's budget. Nominating agencies are expected to submit information on CMIA projects by the April meeting. The commission will adopt the list of projects eligible for STIP augmentation in June.

- 9. Which Proposition 1B programs would you identify as early candidates to receive an appropriation of funds for Budget Year 2007/08?**

CMIA, STIP Augmentation, Route 99 Corridor and SHOPP Augmentation.

- 10. What is the key objective of the Commission's adopted CMIA Program.**

The commission adopted a program that is consistent with the 60/40 split of funding between the south and north state and as much as possible was balanced with the geography of those regions. All of the projects that were funded met the criteria of improving mobility along key congested corridors within the timeframe stipulated in the CMIA guidelines.

- 11. What is your assessment of the Commission's performance in adopting the CMIA program? What if anything would you do differently?**

My seat on the commission became effective March 1, so I had no vote at the Feb. 28 meeting. From my vantage point, the commission was under a great deal of pressure to make the final cut on \$4.5 billion of projects from an \$11 billion list submitted to them and they had very little time to do it. With more than half the projects getting the ax, there is no way everyone was going to be completely happy with the result. Was it a nice, clean, orderly process getting from A to Z? No. After years of neglect with projects literally sitting on the shelf just waiting for the money to make them a reality, you could hardly expect anything less than a feeding frenzy among all the agencies hungry to get their projects funded. But if you examine the final list of projects that received funding, there is not a loser in the entire list. Every project addresses a critical problem and every project according to the agencies that nominated them can be delivered within the timeframe stipulated by Prop. 1A.

- 12. What actions do you propose to ensure that CMIA projects remain on schedule and under budget?**

The commission has directed staff to form a project delivery council comprised of CTC staff, Caltrans and regional agencies. This council will be charged with the responsibility of reviewing the projects quarterly and providing monthly updates to the commission.

The nominating agencies will be responsible for providing project cost estimates and schedules for completion of the projects, as well as meeting key milestones throughout the life of the project. Any cost overruns will have to be born by the nominating agency.

13. How do you plan on using the Goods Movement Action Plan when implementing the program funded by the Trade Corridors Improvement Fund?

The CTC is required to consult the Goods Movement Action Plan, as well as other goods movement plans that have been drafted by the regions and ports. These plans contain a great deal research and input from individuals who have considerable expertise in the field of goods movement, and are therefore valuable reference tools to be used. But they are not comprehensive and do not in all cases reflect the intent of the Legislature regarding the implementation of the Prop. 1B TCIF money.

14. Is the Goods Movement Action Plan sufficiently comprehensive, or do you believe there are additional items not addressed in the plan [that] the Commission should consider? If so, what are these items?

The Goods Movement Action Plan does not address the role of airports, which is significant, because airports carry most of California's export merchandise trade. Nor does it thoroughly examine the vital role of agricultural goods movement to the state's economy. It would seem prudent to examine how a portion of the TCIF money could be used to improve key corridors to the major airports. The challenge, once again, is not enough money. The \$2 billion available from TCIF could easily be poured into the Long Beach/LA port corridors alone and we would only be scratching the surface in that region, without anything being done to improve the Oakland Port, Stockton and Sacramento ports or any of the major goods movement airports. In my view, this is a key area where public-private partnerships could be used to expand the pool of money and insure that the businesses benefiting from the bond money are helping to pay for the improvements.

15. Do you have any concerns with how public transit funds are distributed in the STIP process? Do you have any suggestions for how these funds might be distributed more efficiently?

For the sort term, there appears to be enough money being generated from STIP and Prop. 42 funds to cover the regional requests for transit capital. The regional agencies are responsible for programming their transit capital and recently there has even been money in the Public Transit Account that has not been used – not because there aren't capital projects in the pipeline, but because the regions can't identify where they are going to get the money to operate the expanded capacity. That is a difficult issue to resolve. I don't believe it would be wise for the state to get in the business of covering shortfalls in local transit operations.

16. Have we sufficiently taken into account greenhouse emissions when planning for transportation?

The short answer is, "No." But the CTC is working to resolve this shortcoming by coming up with new guidelines that will require regional agencies and the state to incorporate strategies for reducing greenhouse gas emissions into their regional transportation plans.

17. What strategies would you recommend to achieve greater success in reducing emissions?

A good place to start would be to examine the recommendations of the California Climate Action Team, which explores the expanded use of renewal energy at transportation facilities, recommends ways transportation dollars can be used to better mitigate greenhouse gas emissions, and calls for more aggressive strategies to increase transit use and carpooling. This is a huge issue that in my view must be approached from a number of angles.

18. How can the Commission, in evaluating the merits of projects seeking state funds, better assess emission impacts?

I believe our goal should be to incorporate the best science we have available on greenhouse gas emissions into state and regional modeling and make sure that the modeling is consistent throughout every region. We can't do this overnight, but we should be aggressively pursuing a better standard. In the meantime, projects need to move forward. We need to incorporate new standards in an orderly manner and for the sake of project delivery, avoid holding up funding for projects that were prepared under older standards.

**RESPONSES TO QUESTIONS FROM THE SENATE RULES COMMITTEE
SUBMITTED BY CARL GUARDINO
APRIL 4, 2007**

1. Please summarize the experiences or qualifications that make you a good candidate to serve on the California Transportation Commission?

It has been a personal passion and a significant part of my profession to work on transportation policy, programs and projects for nearly 20 years through jobs in the public sector, private sector and the not-for-profit sector.

With road safety concerns as a high priority, while a young staff person to a State Assemblyman, I helped on efforts to bring improvements to both Highway 152 (The Pacheco Pass) as well as the Interchange at 101/25.

During the past 15 years, I have also led or co-led several successful local transportation funding measures to build specific improvements approved by local voters. Several of these have been in Santa Clara County, while also providing assistance voluntarily in several other counties - including San Mateo, Alameda, Contra Costa, Napa and Sonoma.

In addition to direct experience on transportation proposals, I believe I bring a perspective as to why a sound transportation system contributes to a healthy economy - improving the quality of life for workers and their families, and ensuring the prompt movement of goods so vital to California's economy.

2. What goals do you hope to accomplish during your tenure as a member of the California Transportation Commission?

First, with my Commission colleagues and staff, to help ensure that the Commission is a good steward of taxpayers' money, leveraging limited state dollars for traffic relief, goods movement, road safety, and cost-effective transit options.

Second, working with the Commission, Legislature, Governor and local partners, wisely allocating Proposition 1-A and 1-B voter-approved dollars in an expeditious manner, and calling for accountability of those dollars once allocated.

Third, through revenue sources like the sales tax on gasoline help to ensure that California's transportation system has adequate funds for new facilities as well as to maintain the facilities we currently have.

Fourth, to the extent it is of value, continue to work with counties throughout California who are attempting to meet local needs by becoming a "self-help county" or trying to renew through voter-approval their status as a "self-help county."

Fifth, work with my Commission colleagues to fairly address the transportation needs throughout California, rather than solely the area in which I live and work.

3. What do you perceive to be the most important issues confronting the commission in both the short and long term?

In the short-term, successfully implement voter-approved Proposition 1-B. This includes upcoming decisions for

the Trade Corridor Improvement Funds (TCIF), the State Transportation Improvement Program (STIP) augmentation, and the State-local partnership funds. While much of this work will be done by the Commission, we must also seek the insights of the Legislature and the Governor who placed the initiative on the ballot, to further ensure we capture the will and expectations of the voters.

In the long-term, I am quite concerned by the backlog of under funded maintenance needs in our State Highway Operation and Protection Program (SHOPP). Even though the state's gas tax proceeds are used solely for this purpose, California is only funding barely over half of the identified need.

We must also focus at the federal level, when SAFETEA-LU is up for re-authorization in 2009. California is most successful in Washington when we have a united message and unified goals. The Governor, Legislature, Commission, Metropolitan Planning Organizations, local agencies and the private sector must work together again to ensure that a fair share of federal funds come back to California.

4. What does the commission hope to achieve with performance measures?

In two words, greater accountability. Performance measures, appropriately selected, adequately tracked and responsibly reported, ensure greater accountability in delivering improvements as quickly and cost-effectively as possible.

It is my belief that Proposition 1-B performance measures are weighed heavily on congestion relief, quick delivery and connectivity. STIP guidelines include system preservation, safety, mobility and return on investment.

From what I have already heard from colleagues on the Commission and our staff, a stronger adoption and tracking of performance measures should also be applied to TCRP and SHOPP funded projects.

5. In what program areas is the commission using performance measures? How will the commission monitor projects to determine if the performance measures are being met? Are there any environmental program measures?

It is my understanding that the commission employs performance measures, or will employ performance measures, on the Proposition 1-B funding categories, which include the recently adopted \$4.5 billion Corridor Mobility Improvement Account (CMIA), as well as the STIP, SHOPP and TCIF. As the State-Local Partnership Program is further defined, performance measures and guidelines must also be adopted. Direction from the Legislature and the Governor will be greatly valued in this process.

The commission has a responsibility to help monitor projects to determine and report if the performance measures are being met. This cannot be stated lightly, as the entire commission staff for all of its work is less than 20 employees, with thousands of projects receiving funds by direct allocation or by formula.

(I AM NOT SURE OF THE COMMISSION'S ROLE ON ENVIRONMENTAL PROGRAM MEASURES, OR IN THE IMPLEMENTATION OF AB 32. NEED INPUT FROM JOHN BARNA AND WILL KEMPTON.)

6. Proposition 1-B: Do you believe some programs, as compared to others, are better established and have a quicker delivery time within the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006? Please identify and describe these programs.

There are at least four areas in which the Commission seems to already have the responsibility on which to move forward, and to do so as quickly and effectively as possible.

First, the CMIA funds were allocated on February 28 of this year, the day before my term began on the commission. The funds are allocated, but we must closely monitor the use of those funds.

Second, the \$2 billion STIP augmentation is slated for the commission's action in June, after hearings in both Southern California and Northern California.

Third, the \$1 billion for numerous improvements on State Route 99, from Kern County in the south all

the way to Butte County in the north.

Fourth, the \$750 million to augment the SHOPP, with at least one-third of those funds to be used for Intelligent Transportation Systems (ITS) and technology improvements on local arterials and roads.

The \$2 billion in the Trade Corridors Improvement Fund (TCIF) will take more time as the commission looks for legislative direction on a number of issues for this new program. This is also true for the \$1 billion for State-Local Partnership distribution. Legislative direction is needed before the commission can proceed.

7. What challenges do you see for the commission in implementing Proposition 1-B? Do you have any suggestions for statutory changes related to Proposition 1-B?

I believe the commission would benefit from guidelines from the Legislature and Governor in several categories, which include the following:

- * As mentioned above, the \$2 billion to be allocated by the commission for the TCIF. Clarity is needed as to what qualifies as a local match, as well as how should emission reductions be incorporated into the selection of projects.

- * Proposition 1-B called for \$4 billion for the Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA), including \$400 million for intercity rail while the \$3.6 billion balance is to be allocated through the existing STA (State Transportation Assistance) formula. Should the commission play any additional role in either monitoring or distributing the \$3.6 billion? To keep faith with the voters that there will be strong accountability, this should at least be considered.

- * The State-Local Partnership Account of \$1 billion needs several issues resolved. What conditions and criteria might the Legislature and Governor approve by statute as we develop guidelines? It is expected that "self-help counties" will be eligible for matching funds, but it must be determined if other counties might also somehow be eligible with other locally generated dollars.

8. Does the commission yet have any detailed data on which specific projects would be funded with this level of appropriation? Do you anticipate this data to be forthcoming?

As far as I know, the commission doesn't have specific data for individual projects at this time. The commission should have a better perspective on the STIP projects for the next three years after we adopt the 2006 augmentation this June.

9. Which Proposition 1-B programs would you identify as early candidates to receive an appropriation of funds for Budget Year 2007-2008?

The four categories identified earlier for quick action would be most appropriate: CMIA, the Route 99 Corridor, the \$750 million SHOPP augmentation and the June STIP augmentation.

10. What is the key objective of the commission's adopted CMIA program?

On February 28, the commission adopted the \$4.5 billion CMIA list of projects. My tenure on the commission began on March 1. My sense of the commission's action was to try to select projects throughout the state that could alleviate congestion through identified improvements that could soon move to construction and be delivered in a timely fashion.

11. What is your assessment of the commission's performance in adopting the CMIA program? What, if anything, would you have done differently?

After hearing a recent panel at the California Transportation Foundation in March, with panelists from both the commission and legislative staff, several common themes resonated with me. First and foremost, statute called for action in a very tight time window. More time to interact with the regions submitting projects may have helped the commission in evaluating each project more closely, and to allow more time for the submitting agencies to respond. Second, the dollar amount of projects submitted, \$11.3 billion, for a total allocation of \$4.5 billion, made the process even more difficult to both evaluate as well as select winning projects. Finally, from an outside perspective, it was not clear if the commission communicated as much as it may have with the local agencies, Caltrans and the public about the timeline, the criteria to be used, and the selection process. A more defined communications plan might help in the future.

12. What actions do you propose to ensure that CMIA projects remain on schedule and under budget?

First, increases in cost estimates will be the responsibility of the agency that nominated the project. That clear guideline should help to signal that the state will not be rescuing projects with cost-overruns that are over-budget.

Second, the commission has already directed staff to form a Project Delivery Council, consisting of CTC Staff, Caltrans and regional agencies, with the responsibility to review the projects every quarter against set milestones as well as to review the costs and the expenditures to date. Monthly updates must also be submitted to CTC staff. I will also recommend to staff and my commission colleagues that the Project Delivery Council report back to the CTC in-depth each quarter, with a special emphasis in reporting back successes which can be held up as Best Practices, as well as any projects that are falling behind. Projects falling significantly behind milestones or with expenditures significantly higher than expected should be brought to the commission's attention even earlier than quarterly updates.

13. How do you plan on using the Goods Movement Action Plan when implementing the program funded by the Trade Corridor Improvement Fund?

The Goods Movement Action Plan should be used as a starting point in developing the Trade Corridor Improvement Fund. Several items still need to be fleshed out that are not captured in the GMAP, as I indicate in response to the next question.

14. Is the Goods Movement Action Plan sufficiently comprehensive, or do you believe there are additional items not addressed in the plan the commission should consider? If so, what are these items?

The Business, Transportation and Housing Agency deferred addressing airports and air cargo issues, and air cargo impacts exports ranging from flowers to technology - in fact, in dollar value, it captures more than half the dollar value of California's export merchandise. It is my understanding that the GMAP could have also been more comprehensive as it relates to agriculture. The commission should use GMAP, as well as regional plans, but also seek legislative guidance and our own system of workshops and forums on goods movement and trade corridors.

15. Do you have any concerns with how public transit funds are distributed in the STIP process? Do you have any suggestions for how these funds might be distributed more efficiently?

The STIP allows regions to nominate the projects they wish to nominate, whether transit or road. In the

short term, Proposition 42 dollars are weighted towards transit funding over highway projects as well. My initial impression is that the flexible use of STIP funds serves our regions well. In urban areas, where there may be a higher demand and need for cost-effective transit options, the flexibility is present. In more rural areas, where road improvements are often higher priorities, that flexibility is also present. Whether transit or roads, it is important that STIP funds be used in a timely and cost-effective manner.

16. Have we sufficiently taken into account greenhouse gas emissions when planning for transportation?

AB 32, the Global Warming Solutions Act, directs the California Air Resources Board to establish emissions limits and other policy goals. The CTC is moving to update Regional Transportation Plan (RTP) guidelines to provide direction to regional agencies in adopting strategies for addressing greenhouse gas emissions. The commission can also act to highlight regional and local efforts that find creative and cost-effective greenhouse gas emission strategies and tactics, and to help share those successes with other regions.

17. What strategies would you recommend to achieve greater success in reducing emissions related to transportation?

First, California is home to the strongest innovation economy in the world. With transportation accounting for 40 percent of the state's greenhouse gases, and an even higher 50 percent in the San Francisco Bay Area where I reside, there is much we can do to improve automobile technology. Biofuels, hydrogen and plug-in hybrid electric vehicles offer both short-and long-term solutions to substantially reduce greenhouse gases. Plug-in Hybrid Electric Vehicles, for instance, are already capable of getting more than 100 miles per gallon, with most charges being made during off-peak hours.

Second, the Climate Action Team has identified several strategies and tactics that can be implemented at the state, regional and/or local level. Continuing on the theme of technology, these include Intelligent Transportation Systems. Regional Transportation Plans already consider land use decisions, which can also positively impact emissions targets. Especially in more dense urban areas, land use decisions can also make solutions like biking and walking a more likely tactic in reducing emissions, even if used only one day a week.

The private sector can also play a significant role, in voluntarily offering programs that allow telecommuting, flexible hours and other ways to avoid car trips or trips during the most congested hours on the road.

Other items identified by the CAT include the use of transportation funds for HOV/HOT lanes, expanded hours of service for logistics, and enhanced transit.

18. How can the commission, in evaluating the merits of projects seeking state funds, better assess the emission impacts of these projects?

The commission can ensure that consistent and up-to-date modeling practices are required by local agencies submitting projects. For those areas in need of assistance, especially small and rural counties and regions, Caltrans should provide assistance. Also, as with any green building effort, the full life cycle of emissions used should be considered for both the construction, maintenance and use of a transportation facility. Ideas should be sought from the experts themselves - the construction industry, contractors, Caltrans and others.

Carl Guardino
President & CEO
Silicon Valley Leadership Group
224 Airport Parkway, Suite 620
San Jose, California 95110
Phone: 408/501-7864
Fax: 408/501-7861

Background:

1. Qualifications

- My experience and qualifications in transportation began in 1983 as an elected City Council member and mayor. I realized we had to tackle our local transportation by building our infrastructure for better and wider roads. I influenced my colleagues on the city council to build a local transit (Beeline) that has become a total success. Thereafter, I served for seven years on the MTA Board—one year as vice-chair and two years as chairman. Soon after leaving the MTA, I was appointed to the Metrolink Board serving for six years. All along working to improve our infrastructure and the transportation system with a vision toward the future.

2. What goals do you want to accomplish during your tenure as a member of the California Transportation Commission?

- Ensure that transportation has a stable funding source for both maintenance and new facilities.
- Improve air quality
- Work to ensure that the State's investments in projects by regional agencies and Caltrans result in better reliability and less congestion.
- Ensure that the transit system becomes a larger percentage of the transportation system in major urban areas.
- Ensure projects funded by CTC start and finish in a timely manner.
- Consolidate rail transit systems to gain economies of scale and increase effectiveness of service, e.g., the San Diego corridor where three operators provide intercity and commuter service.
- Provide progress and inform the public of project results.
- Provide impetus to improve the movement of goods in the state and focus on better coordination and connectivity of the various modes.

3. What do you perceive to be the most important issues confronting the Commission in both the short and long term?

2006 Annual Report:

Short Term

- Implementing Proposition 1B; re-visiting public-private partnerships, project delivery, meeting the rehab and maintenance for the state's transportation system.
- Develop Trade Corridors Improvement Fund program with close coordination with the Legislature, STIP augmentation, and State local partnership.

Senate Rules Committee

Long Term

- Providing for enhanced, stable funding source for transportation for both the STIP and the SHOPP, and additional and increased sources of income.
- Federal transportation bill re-authorization in 2009.

4. You have served on the CTC since April 2006. Would you recommend any changes in operations or objectives of the CTC?

Changes in:

- Operations
 - Evolving, CTC made changes in its monitoring of Caltrans delivery to include completion of the project rather than awarding the contract.
 - Increase budget to attract and retain professional staff from large labor pool to implement Proposition 1B.
 - Changing CTC to handle the implementation of Proposition 1B.
 - Enforce more on-time projects with fewer cost overruns.
- Objectives:
 - Continue to focus on ensuring that California gets its share of federal funds in terms of roads, transit, aeronautics and rail.
 - Increase Commission's scrutiny on the timely delivery of projects and benefits accrued from those projects.
 - Continue changing the Commission perspective from investing in projects to investing in benefits.
 - Widen Commission's new benefits approach, as appropriate, to include implementing AB 32 for emissions reduction.

5. What does the Commission hope to achieve with performance measures?

- Performance measures in STIP guidelines are safety, mobility, accessibility, reliability, throughput, system preservation, and return on investment. Performance measures in Proposition 1B focus primarily on early delivery, congestion relief, mobility, connectivity, and reliability. In the goods movement portion of Prop. 1B, velocity is added to throughput and reliability. And, air quality emission reductions are mentioned as performance measure in the bond package as well.
- Benefit the public and commerce
- Performance measures and outcomes are important to achieving the objective of investing in benefits. Without performance measures, outcomes and ongoing monitoring of progress, the Commission cannot determine if projects and strategies achieve their proposed benefits. While investing in benefits is a strategy that will be used in implementing Proposition 1B, the Commission would like to apply those measures and outcomes to all the programs for which it is responsible—STIP, SHOPP, and even TCRP, to the extent

warranted. Ultimately, performance measures are about accountability. As we are experiencing with Proposition 1B, the public, the Legislature, and the Administration are focused on ensuring proper accountability for using bond funds appropriately. But, enhanced accountability should apply to all transportation programs.

6. In what program areas is the Commission using performance measures? How will the Commission monitor to determine if the performance measures are being met? Are there any environmental program measures?

- Program areas are the STIP, SHOPP, CMIA, TCIF, and other Proposition 1B programs
- Asking for before and after pictures of projects and complete analysis to see if it delivered on projections. Environmental program measures will be part and parcel of the Commission's work on AB 32 green house gas emission reductions in the transportation arena.

7. Do you believe some programs, as compared to others, are better established and have a quicker delivery time within the Highway, Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006? Please identify and describe these programs.

The Commission is attempting to get the programs for which it has responsibility on line as quickly as possible.

- Corridor Mobility Improvement Account (CMIA) (\$4.5 billion)
- Route 99 (\$1 billion)
- STIP augmentation (\$2.0 billion)
- Highway Safety, Rehabilitation, and Preservation Account (HSRPA) \$750 million for the SHOPP
- Projects with the earliest start date ready to go

Clearly the STIP and SHOPP are already established and will have quicker delivery than the TCIF, which is not yet established. The CMIA will move as quickly as the 2006 STIP—that is, by the end of the 2010-11 fiscal year.

8. What challenges do you see for the Commission in implementing Proposition 1B? Do you have any suggestions for statutory changes to Proposition 1B?

- Challenges include: project delivery, completing guidelines on some of the programs as further guidance is needed from the Legislature.
- Commission may need policy guidance on the:
 - Trade Corridors Improvement Fund (TCIF) (\$2.0 billion) regarding what qualifies as local match, including private funds; what constitutes public and private benefit; and how to incorporate emission reduction into project selection.
 - Public Transportation Modernization Improvement, and Service Enhancement Account (PTMISEA). \$400 million to Caltrans for intercity rail improvements regarding which agency will allocate the intercity funds. What role the Commission should play, if any, in monitoring the distribution of \$3.6 billion to eligible transit agencies.

- Transit System Safety Security and Disaster Response Account (TSSSDRA) (\$1 billion). What role the Commission should play, if any, in monitoring the distribution of \$1.0 billion to eligible agencies.
 - State-Local Partnership Program Account (SLPPA) (\$1.0 billion). The Commission will be developing guidelines and will need guidance on the “conditions and criteria as the Legislature may provide by statute,” the most important of which will be what constitutes match funding for this program.
- Design build is an issue that the Commission continues to work with the Legislature on how to best re-establish public-private partnerships.
9. The Governor’s Budget for 2007/08 includes appropriations of more than \$7.7 billion worth of Proposition 1B bond funds. Does the Commission yet have any detailed data on which specific projects will be funded with this level of appropriation? Do you anticipate this data to be forthcoming?
- The Commission does not yet have detailed data on specific projects.
 - The Commission expects the nominating agencies to submit information on CMIA projects by the April Commission meeting. The Commission will have a handle on the STIP projects over the next three years when it adopts the 2006 STIP Augmentation in June.
10. Which Proposition 1B programs would you identify as early candidate candidates to receive an appropriation of funds for Budget Year 2007/08?
- CMIA, STIP Augmentation, Route 99 Corridor and SHOPP Augmentation.
11. What is the key objective of the Commission’s adopted CMIA Program.
- The Commission adopted a CMIA program that was geographically balanced, provides mobility improvements in highly traveled or highly congested corridors in all regions of California, and targets the bond funds to provide mobility benefit at the earliest possible timeframe.
12. What is your assessment of the Commission’s performance in adopting the CMIA program? What if anything would you do differently?
- The Commission acted under tremendous pressure to deliver a program as required by statute in a very short time frame. The program of projects selected was taken from projects nominated by the regions and Caltrans. The projects were ready to go, met the criteria established by the Commission. The difficulty was fitting \$11.3 billion in nominations in a \$4.5 billion program.
 - The Commission would have benefited from more time to develop its initial recommendations. More time would have eliminated the lack of time needed to reach out to the regions to get a clearer understanding of their projects and benefits.
 - The ability to ask questions from applicants on their projects and have enough time to evaluate with staff and make changes.

13. What actions do you propose to ensure that CMIA projects remain on schedule and under budget?

- CTC already acted in directing staff to form a project delivery council. The council is made up of CTC staff, Caltrans, regional agencies who will review the projects on a quarterly basis against milestones and review of costs and expenditures. CTC staff will receive monthly updates.
- Nominating agencies with projects are required to provide final cost and schedule estimates, measurable performance benefits, and a schedule for adoption and implementation of corridor management plans that will be signed by the Caltrans director, regional executive director(s), and the CTC executive director.
- Increases in cost estimates are the responsibility of the nominating agency

Trade Corridors

14. How do you plan on using the Goods Movement Action Plan when implementing the program funded by the Trade Corridors Improvement Fund?

- CTC required to consult GMAP, similar goods movement plans adopted by regions, regional plans and the CalMITSAC port master plan
- Use as a starting point not end point to develop a program for TCIF

15. Is the Goods Movement Action Plan sufficiently comprehensive, or do you believe there are additional items not addressed in the plan [that] the Commission should consider? If so, what are these items?

- GMAP missing airports and air cargo issues. Issue deferred by BT&H. In dollar value air cargo represents most of CA export merchandise trade (The Role of Air Cargo in CA Agricultural Export Trade, May 2005, CSU Fresno)
- Stricter air quality initiatives.
- State should ensure ground access has mobility and reliability to reach airports.
- The Goods Movement Action Plan could have also had a more developed discussion of the role of agricultural goods movement, as well as how goods are actually transported to sustain the retail economy.
- Commission will consider what was presented in the GMAP, CALMITSAC, and regional plans, continue to hold workshops on trade corridors and goods movement and continuing working to identify issues that may need Legislative guidance.

Transit Funding

16. Do you have any concerns with how public transit funds are distributed in the STIP process? Do you have any suggestions for how these funds might be distributed more efficiently?

- The STIP process is working well. Public Transportation Account funds were available for programming during 2006 STIP cycle. PTA capacity was available for transit projects; it was not entirely used by regional agencies. STIP is flexible and regions can bid on projects that they want. Proposition 42 dollars in the STIP favor funding of transit over highway projects in the near term.
- Since transit capital is the purview of regional transportation agencies, those agencies are in control of what they propose for programming. As a result, if efficiencies are to be achieved in programming PTA funds for transit capital projects, the regional agencies will need to nominate more projects and be prepared to deliver the projects on an efficient timeline.

17. Have we sufficiently taken into account greenhouse emissions when planning for transportation?

CTC is addressing issue. RTP guidelines will be updated to direct regional agencies to include strategies for dealing with greenhouse emissions. Emission strategies should be developed and implemented at the local level, with guidance from the regulatory agencies. Under AB 32 (Nunez), ARB is the agency in charge of establishing emissions limits and other requirements

18. What strategies would you recommend to achieve greater success in reducing emissions?

The California Climate Action Team (CAT) identified five key strategies that the transportation community can address through regional transportation plans (RTPs), it would require additional recommendations from the legislature working with the private sector.

- Vehicle standards: while not within the purview of the CTC or regional agencies to affect, RTPs can incorporate the emission reduction benefits of those standards, especially in highly-traveled corridors.
- Smart land use and Intelligent Transportation System (ITS) applications: RTPs address land use already and can do a better job of describing how better land use strategies, especially when combined with technology strategies, can produce measurable reductions in emissions.
- Afforestation/reforestation: Transportation dollars are already used for various mitigation strategies, including enhanced landscaping, wetland preservation, etc.
- Accelerated use of renewable energy: To the extent that transportation system facilities can take advantage of renewable energy, those emission reductions should be incorporated into RTPs.
- Transportation efficiency: enhanced transit, HOV/HOT lanes, expanded hours of service for logistics, and other key strategies that enhance throughput within the transportation system can reduce VMT and reduce emissions. These strategies are already included in RTPs.
- Additional recommendations from the legislature working with the private sector.

19. How can the Commission, in evaluating the merits of projects seeking state funds, better assess emission impacts?

Ensure that the modeling performed by regional agencies to assess the impact of projects is consistent statewide and based on latest modeling practices. Have Caltrans provide assistance to small and rural areas of state that need assistance in modeling.

Have regional agencies and Caltrans begin process to assess overall emissions over the life cycle of constructing and using a transportation facility.



WARREN E. RUPF
Sheriff

March 30, 2007

Don,

Enclosed please find Form 700 as requested.

I am the law enforcement appointee to the Boating and Waterways Commission. In that regard, not only do I attempt to properly represent the boating constituency, but also that of those who value safe waterways.

I am committed to making whatever contribution I may to keep our waterways safe and available to the good people of California.


WARREN

Sheriff-Coroner

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